

REPUBLICAN RIVER COMPACT ARBITRATION  
BEFORE MR. KARL DREHER, ARBITRATOR

Republican River Compact       )  
  )  
Arbitration                        )  
  )

Deposition of AARON THOMPSON, taken pursuant to  
notice at 8:00 a.m. on April 7, 2009, at the offices of  
the United States Bureau of Reclamation, 203 West Second  
Street, Grand Island, Nebraska.

A P P E A R A N C E S

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- - -

ALSO PRESENT: BRIAN DUNNIGAN, Director, Nebraska  
Department of Natural Resources District.

OTHERS PRESENT BY TELEPHONE: DALE BOOK, PE, Consultant  
for Kansas, Spronk Water Engineers.

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I N D E X

WITNESS:                      Direct              Cross              Redirect

Aaron Thompson                      1                      101                      114

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EXHIBITS:                      Marked      Offered      Found

1	Nebraska-Kansas Area Office Republican River Projects (1 page)	28	--	Appendix
2	Republican Basin Water Rights Chart (9 pages)	56	--	Appendix
3	Testimony of Aaron Thompson Submitted to NDNR (8 pages)	56	--	Appendix
4	Reclamation Statement (5 pages)	87	--	Appendix
5	Testimony of Aaron Thompson Submitted to LRNRD (8 pages)	104	--	Appendix
6	Testimony of Aaron Thompson Submitted to URNRD (9 pages)	105	--	Appendix
7	Summary, Conclusions and Concerns by the Bureau of Reclamation (5 pages)	106	--	Appendix

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<u>EXHIBITS (CONT'D) :</u>		<u>Marked</u>	<u>Offered</u>	<u>Found</u>
8	Letter date-stamped 1-10-08 to Justin Lavene from Aaron Thompson with Attachments (10 pages)	109	--	Appendix
9	Letter date-stamped 5-7-08 to Justin Lavene from Aaron Thompson with Attachments (4 pages)	110	--	Appendix
10	Letter from Ann Bleed dated 5-1-06 (2 pages)	111	--	Appendix

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STIPULATION:

It is stipulated and agreed by and between counsel for the parties in this action that all statutory requirements as to certificate, mode of transmission, notice, notice of filing and the presence of the witness during the extension of the testimony are hereby expressly waived.

It is further stipulated that all objections as to form, foundation and responsiveness shall be made at this time or otherwise deemed waived; all other objections will be reserved until time of trial.

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REPORTERS CERTIFICATE:

State of Nebraska                    )  
  ) ss.  
Lancaster County                    )

I, KELLY S. HORSLEY, certified reporter and a Notary Public duly commissioned, qualified and acting under a general notarial commission within and for the State of Nebraska, certify that AARON THOMPSON, appeared before me and was first sworn to testify the truth, the whole truth and nothing but the truth; that this deposition was reported by me and taken pursuant to the stipulation and hereinbefore set forth; that I am not counsel, attorney or relative of any of the parties or otherwise interested in the event of this suit; and that the following pages reflect truly, accurately and completely the recording of this proceeding.

IN TESTIMONY WHEREOF, I have hereunto set my hand officially and attached my notarial seal at Lincoln, Nebraska, this \_\_\_\_\_ day of April, 2009.

\_\_\_\_\_  
Notary Public

- - -

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1 PROCEEDINGS:

2 MR. CHAFFIN: There is one thing. This is John  
3 Chaffin speaking for the Department. The Solicitor and  
4 Secretary's Office has asked me to preface the  
5 depositions of both Aaron Thompson and Marv Swanda with  
6 --that the United States is not a party to the case and  
7 to the arbitration action, and that Aaron and Marv are  
8 appearing here today, and will appear next week pursuant  
9 to an authorization from the Secretary's Office under  
10 what we call the Touhy Regulations, 43, Code of Federal  
11 Regulations, 2.8, which sets out that when the United  
12 States is not a party, or when the Department of Interior  
13 employees are not a party, how they will participate.

14 And in the letter that I believe all the  
15 parties have, there is an authorization from Mike Ryan  
16 for Aaron and Marv to testify, and then they spelled out  
17 the parameters of their testimony; what they were  
18 authorized to testify to. And I was asked to just remind  
19 everybody that those are the parameters that we're here  
20 today and in our appearance. They are limited to that.  
21 And so we appreciate counsel's adherence to that, and  
22 hopefully we can have a nice amicable deposition, and  
23 going on to hearing next week.

24 THE REPORTER: And could you clarify Touhy  
25 Regulations for me? Spell that.

Aaron Thompson -- direct

2

1 MR. CHAFFIN: Touhy is spelled T-o-u-h-y.

2 THE REPORTER: Thank you.

3 MR. CHAFFIN: And that is the name of a Supreme  
4 Court case that establishes criteria for a federal  
5 employee testifying in a hearing which they are --  
6 proceeding which they are not a party.

7 THE REPORTER: Thank you.

8 Raise your right hand, please. Do you swear  
9 the testimony you're about to give today will be the  
10 truth, the whole truth, and nothing but the truth, so  
11 help you God?

12 MR. THOMPSON: I do.

13 AARON THOMPSON

14 Called as a witness on behalf of the State of  
15 Nebraska, having first been duly sworn, testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. WILMOTH:

19 Q Good morning, Mr. Thompson.

20 A Good morning.

21 Q How are you feeling today?

22 A Good.

23 Q Very good. My name is Tom Wilmoth, and just  
24 for the record, and you probably know, but I represent  
25 the State of Nebraska in this proceeding, and we're here,



Aaron Thompson -- direct

3

1 obviously, in regard to a dispute about the Republican  
2 River. And I appreciate you making yourself available to  
3 talk to us today, and I appreciate the Bureau doing that  
4 for us. I appreciate John's effort, John Chaffin's  
5 efforts, John Draper's efforts, and Pete Ampe's efforts  
6 to make sure that we had an opportunity to do this in a  
7 timely fashion.

8 A Thank you.

9 Q What I would like to do, is just briefly start  
10 with some discussion about your personal and professional  
11 background; learn a little bit about you; walk through a  
12 little bit of what you know about this dispute; some of  
13 the issues that are related to this dispute, and some of  
14 the things that have been stated in your written  
15 testimony.

16 With that said, could you just describe your  
17 personal background for me; where you haled from, how  
18 long have you been in Nebraska, that kind of thing.

19 A Okay. I was born here in Nebraska in a small  
20 town called Broken Bow. I lived there until I went to  
21 college at UN-L in Lincoln where I obtained a mechanical  
22 engineering degree; worked for a company after that  
23 called the Black & Veatch. It's an engineering  
24 consulting firm; traveled around with those folks for a  
25 while, and then the week before September 11th, 2001, I

Aaron Thompson -- direct

4

1 started with the United State Government at their  
2 facility, Hoover Dam, and moved around down to a dam  
3 called Davis Dam where I was a facility manager of that  
4 location.

5 I guess did some more schooling. Got an MBA  
6 from the University of Phoenix; moved with the government  
7 again up to Billings, Montana for a short time, and then  
8 I moved to Casper, Wyoming where I was called a deputy  
9 area manager for the Wyoming area office for the Bureau  
10 of Reclamation, which does cover some area in Nebraska;  
11 the North Platte River up to North Platte, kind of their  
12 boundaries. And then about a year ago, or excuse me,  
13 about a year-and-a-half ago, I moved to Grand Island,  
14 here in Grand Island to be the area manager for the Grand  
15 Island area office, which covers portions of Nebraska and  
16 Kansas, and the Republican River.

17 Q And just to orient me on the timing of those  
18 things, can you tell me when you were, generally, in the  
19 lower Colorado region?

20 A Yeah, I'm sorry. I moved there in August of  
21 2001. I was there until -- I was at Hoover until February  
22 of '03. And then I was moved down to Davis Dam until,  
23 roughly, February of '05, where I moved to Billings. And  
24 approximately August of -- make sure I have my time lines  
25 here straight -- August of '06 I moved to Casper,

Aaron Thompson -- direct

5

1 Wyoming. And then August of '07 I moved here to Grand  
2 Island.

3 Q And I assume from your description that you  
4 were with the Bureau both in the lower Colorado region  
5 and in the Casper office, and Billings, also?

6 A Yeah. Yes, I was.

7 Q So you've been with the Bureau since, roughly,  
8 2002; is that correct?

9 A Yes.

10 Q In one capacity or another?

11 A Yep.

12 Q And what are your general responsibilities as  
13 the manager here in Grand Island?

14 A General responsibilities for the area manager  
15 in the office is for oversight over the projects that we  
16 have. We have fifteen projects throughout Nebraska,  
17 Kansas. Roughly half in Nebraska, half in Kansas, and we  
18 have one project in Colorado, Bonny Dam.

19 Responsibility is for managing the group that  
20 is in charge of land resources; environmental compliance;  
21 operations and maintenance; engineering. Of course we  
22 have an admin officer, admin-type activities; budget  
23 officers. I actually only manage two people in the  
24 office, the deputy area manager and the administrative  
25 assistant. And from there on down, it's managed by

Aaron Thompson -- direct

6

1 division chiefs, and then branch chiefs, and then  
2 supervisors. There's a --

3 Q I'm sorry, I didn't mean to interrupt you.

4 A Oh, that's okay. There's a total of about 48  
5 people in the office if you include the folks here in  
6 Grand Island, in our McCook field office, and then our  
7 dam tenders.

8 THE REPORTER: And then your what?

9 THE WITNESS: Dam tenders.

10 Q (By Mr. Wilmoth) That's d-a-m without a --

11 A Yeah.

12 (Laughter)

13 A (Continuing) I figured she got that, but --

14 Q You mentioned that you really, technically  
15 manage only two people, yet there are 48 people in the  
16 Grand Island and McCook office and your dam tenders, but  
17 do those 48 people ultimately report to you? I mean, are  
18 you responsible, in other words, for those 48  
19 individuals?

20 A Yeah, that's --I guess I was trying to go down  
21 the hierarchy. It's --I'm at the top of the  
22 organization chart, and eventually it does filter up to  
23 me for the --

24 Q And you mentioned earlier that you had a  
25 mechanical engineering degree?

Aaron Thompson -- direct

7

1 A Correct.

2 Q When did you receive that, and from which  
3 institution, UN-L? Is that --

4 A It was UN-L, 1998, December.

5 Q And in your time with Black and Veatch, what  
6 kind of work did you typically conduct?

7 A I did engineering design work for coal-fired  
8 power plants, and also for gas turban combined cycle  
9 power plants. The notable projects were in --one was in  
10 China. I never actually went there, but did all of the  
11 design work between the two agencies. And the other one  
12 was in Carthage, Texas, the combined cycle power plant,  
13 so --

14 Q Did you do any type of hydrological work or  
15 analyses with Black and Veatch?

16 A The only hydro work I did was things like pipe  
17 sizing and pump sizing and steam valve sizing.

18 Q And then you mentioned that you received an MBA  
19 from the University of Phoenix. Is that a Masters in  
20 Business Administration?

21 A Correct.

22 Q And the date of that?

23 A I believe that was in November of '05.

24 Q And have you engaged in any activity that was  
25 reliant on that MBA, in particular? Do you have any

Aaron Thompson -- direct

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1 other employment that required the MBA?

2 A My employment didn't require that degree.

3 Q That was a voluntary decision on your part?

4 A Yep.

5 Q Do you possess any other degrees?

6 A No, I do not.

7 Q Either at your time at Black and Veatch or your  
8 time with the Bureau, have you developed any expertise in  
9 modeling, specifically groundwater modeling?

10 A No, I haven't.

11 Q Do you have individuals in this office, or  
12 elsewhere in the Bureau that you rely on for opinions  
13 about groundwater movement in relationships to surface  
14 water?

15 A Yes, I do.

16 Q Who are those individuals?

17 A A few of them would be Gordon Aycock, who is in  
18 this room; Marv Swanda, Mark Phillips, Patrick Erger, and  
19 others associated in the groups in our regional office in  
20 Billings. Those folks I mentioned, Gordon, Mark and  
21 Patrick are all in our regional office in Billings,  
22 Montana.

23 Q In Billings. One of the things that was  
24 mentioned by Mr. Chaffin earlier, is that you have been  
25 authorized to speak to certain issues, and by inference,

Aaron Thompson -- direct

9

1 not authorized to speak to other issues; is that your  
2 understanding?

3 A Yes.

4 Q Could you summarize, generally, what you  
5 understand you are authorized to speak to?

6 A I think just generally, it's to talk about any  
7 past or present policies that the Bureau of Reclamation  
8 has engaged in, and specifically on the Republican River.

9 Q And past or present policies, would those be  
10 policies that relate to Bureau projects or --

11 A To contracts we have with our irrigation  
12 districts, contracts we have with anything dealing with  
13 our water.

14 Q And I assume that you're authorized to speak to  
15 the issues that are contained in your written responses  
16 to Kansas' questions?

17 A Yes.

18 Q In order to keep me from overstepping my  
19 boundaries, can you tell me, generally, what you are not  
20 authorized to speak to?

21 A I think the simplest thing I am not authorized  
22 to speak to is future policies, or future decisions.

23 Q Future from today's date, for example? Is that  
24 what you mean?

25 A Yeah, exactly.

Aaron Thompson -- direct

10

1           Q     So would that include, for example, potential  
2 purchases of surface water by the State of Nebraska in an  
3 effort to comply within the Republican River Compact?

4           A     Yeah, and how those purchases would work. I am  
5 definitely able to talk about how they did work.

6           Q     Okay. Are you authorized to speak to future  
7 projections about the impact of such activities? On the  
8 hydrology of the basin, excuse me.

9           A     I guess, define it more.

10          Q     Well, for example, are you authorized to speak  
11 to potential for surface water purchases to assist the  
12 State in complying with its Compact obligations?

13          A     I think I'm --From my understanding, I'm able  
14 to talk about, that the United States Government is a  
15 willing partner, and has been a willing partner in  
16 surface water purchases; but how those may work, and how  
17 those might be structured would be something I would --in  
18 the future with something I have to get my contracts  
19 folks together, the attorneys together, the solicitor,  
20 all the different parties involved. So, I guess it's  
21 thinking about those details of how those would work. I  
22 don't think I can speak to how exactly those would work.

23               MR. WILMOTH: And John Chaffin --for the record  
24 I will make references --

25               MR. CHAFFIN: You better be careful with that



Aaron Thompson -- direct

11

1 one.

2 (Laughter)

3 MR. WILMOTH: Mr. Chaffin, if there's something  
4 that you need to elaborate on in this regard, feel free  
5 to do so.

6 MR. CHAFFIN: We have a -- the President has  
7 nominated a new Commissioner of Reclamation, and Mr.  
8 Thompson can explain what, you know, the present policy  
9 is. How new policy would be enunciated by the current  
10 secretary and the assistant secretary for water and  
11 science and the Commissioner of Reclamation; until those  
12 people are on board and start to articulate it, he can't  
13 speculate as to what they might do to alter present  
14 policy.

15 MR. WILMOTH: Very good. I understand.

16 Q (By Mr. Wilmoth) I'll ask you this next  
17 question, Mr. Thompson, but if it's really a question for  
18 Mr. Chaffin, that's fine too. Even though I know you're  
19 not under oath, Mr. Chaffin.

20 Just to clarify then, my next question is, is  
21 there anyone who is authorized to discuss those things  
22 currently, that we're aware of?

23 A No.

24 Q Okay. Let's talk just for a few minutes about  
25 your knowledge of the Republican River Basin and the

Aaron Thompson -- direct

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1 river system. You mentioned you came to Grand Island  
2 about a year-and-a-half ago?

3 A Uh-huh.

4 THE REPORTER: Yes?

5 THE WITNESS: Yes, sorry.

6 (Laughter)

7 THE REPORTER: That's okay. I'll remind you.

8 MR. WILMOTH: She's very aggressive. That's  
9 why we like her.

10 Q (By Mr. Wilmoth) Had you ever spent any time  
11 in the Republican River Basin prior to that?

12 A Only as a private recreationalist growing up in  
13 the state of Nebraska.

14 Q Do you have any family that hales from the  
15 Basin?

16 A No. The majority of my family is from central  
17 or Lincoln, Nebraska.

18 Q And generally what have you done in the last  
19 year-and-a-half to familiarize yourself with the Basin  
20 and the various interests in the Basin?

21 A I've attended Compact meetings; the Republican  
22 River Compact meetings. I've attended NRD meetings.  
23 There's a Republican River Coalition. I've attended  
24 those meetings. I've met with my irrigation districts,  
25 both in Nebraska-Kansas. I've met with my managing

Aaron Thompson -- direct

13

1 partners in Colorado to understand what the interests are  
2 of everybody involved. I've also worked on different  
3 groups here in the office preparing things like this  
4 Touhy request for this group.

5 Q Did you review that material that was produced  
6 in response to the Touhy request?

7 A I did.

8 Q And to the best of your knowledge, is that  
9 essentially a complete set of materials that is  
10 responsive, or is there anything that is still being  
11 gathered?

12 A There's nothing that I know of that's still  
13 being gathered. It's hard to say, you know, in the  
14 Republican River, that anything's complete.

15 Q Fair enough. What is your general  
16 understanding of the hydrology of the Republican River  
17 System? For example, is the system groundwater dominated  
18 or surface water dominated?

19 A I guess I have to -- the hydrology of the  
20 system, from my perspective as a manager for the Bureau  
21 of Reclamation is, over time, has been adjusted. Back  
22 before 1944 there were no dams on the system; no federal  
23 involvement. 1935 there was some serious floods that  
24 happened in the region; took the Republican River, I  
25 think, the end of May in 1935 to over 200,000 CFS. The

Aaron Thompson -- direct

14

1 Republican River averages, I think in the summer,  
2 somewhere between one and 3,000 CFS. And so I think from  
3 what I've read of the history, that kind of prompted the  
4 federal government to get involved to do studies about  
5 the hydrology in the Basin.

6 The Federal Government did some reports; wanted  
7 to build some dams in the area; through some reports  
8 indicated that they'd like to have a three-state compact  
9 or some type of similar agreement before they built these  
10 dams. That happened in 1943. There was a --don't know  
11 if I have the name of the Act right --1944 Flood Control  
12 Act; authorized us to start our projects. The Bureau  
13 started building projects in the Republican Basin,  
14 damming the Republican River and some of its tributaries,  
15 and started some irrigation projects. Irrigation  
16 projects serve over 120 some --over 120,000 acres of  
17 irrigated land with project water. The Basin receives no  
18 snow pack like typical basins were used to, in like the  
19 Colorado River, the North Platte River; doesn't receive  
20 snow pack from the mountains. It mainly receives its  
21 water from groundwater and from precipitation.

22 Q And do you know which of those latter two is  
23 the predominant source of water for the river?

24 A I don't know the answer to that question.

25 Q Maybe it wasn't very well worded. Did you

Aaron Thompson -- direct

15

1 understand my question?

2 A I think I did, yeah.

3 Q Okay.

4 A Which is more --and I think that's a --I think  
5 in our Touhy request that could be a Marv Swanda- type  
6 question. He's a little more knowledgeable in the  
7 operations.

8 Q You mentioned that you had --Thank you. You  
9 mentioned that you had attended some RRCA meetings; is  
10 that correct?

11 A Uh-huh.

12 THE REPORTER: Yes?

13 THE WITNESS: Yes.

14 Q (By Mr. Wilmoth) For the record, what is the  
15 RRCA?

16 A Republican River Compact Administration.

17 Q And do you typically view those meetings as a  
18 participant --as an observer or do you participate as an  
19 active participant in the RRCA deliberations?

20 A I think the answer is both. During their  
21 yearly meeting we present data on the, I guess, water  
22 resources in the Basin; what the deliveries were; what  
23 our deliveries are estimated to be for the following  
24 year.

25 Q When is that information presented?

Aaron Thompson -- direct

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1           A     I believe that's in the August time frame of  
2 each year.

3           Q     And do you present that data at any other time,  
4 or comparable data at any other time during the year?

5           A     Only -- We present only if requested at the  
6 other meetings, and that's where I initially went  
7 back to, some meetings are participant, some were  
8 observation, viewers I guess at the meeting. And that's  
9 -- those other meetings I would say we were typically  
10 just there as observers.

11          Q     And you mentioned earlier that you present data  
12 usually in August; is that correct?

13          A     That's my memory of when the annual meeting is,  
14 yes.

15          Q     And then you also provide information on the  
16 quantity of water in storage at Harlan County Lake; is  
17 that correct?

18          A     Correct. According to the final settlement  
19 stipulation, we're responsible for determining the --if  
20 the irrigation amount in Harlan County Lake is above or  
21 below 119,000 acre feet. And we do that monthly, starting  
22 in October, I believe.

23          Q     And those early assessments, those are  
24 projections, is that correct, or what you think might be  
25 the storage, or is that a --

Aaron Thompson -- direct

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1           A     I'm going to --

2           Q     -- final determination. Maybe you could  
3 describe that for me?

4           A     I'm going to let Marv Swanda answer that  
5 question.

6           Q     Do you ever attend the RRCA technical committee  
7 meetings?

8           A     I have attended them in the past, yes.

9           Q     And I would ask the same question with regard  
10 to those meetings. Do you typically attend those as an  
11 observer or a participant?

12          A     I would say typically, as an observer.

13          Q     Do you recall in the last year-and-a-half or so  
14 since you've been here, ever providing any information to  
15 the technical committee?

16          A     I don't remember providing any.

17          Q     Do you know if anyone in your office has done  
18 so?

19          A     I do know that Marv Swanda and Gordon Aycock  
20 attend those meetings. Sometimes they are held via phone,  
21 and I don't know what, if --I just don't know what  
22 information they may have provided the group.

23          Q     Have you reviewed the Republican River Compact?

24          A     Yes.

25          Q     And what's your general understanding of the

Aaron Thompson -- direct

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1 Compact?

2 A I think my general understanding of the Compact  
3 is that it describes how the states divide the water that  
4 is in the Republican River Basin. And the original  
5 Compact, as well as the final settlement stipulation  
6 generally tries to promote fairness; tries to prevent  
7 conflict. It also tries to get collaboration between the  
8 states on how that water is divided.

9 Q It's working like a charm so far, isn't it?

10 A No comment.

11 (Laughter)

12 Q Now you mentioned both the Compact and the FSS,  
13 the FSS being the Final Settlement Stipulation.

14 A Correct.

15 Q And you --are you familiar with the FSS?  
16 You've reviewed the FSS?

17 A I have.

18 Q And how does --Let me correct my grammar. How  
19 do the federal projects fit into the Compact and FSS in  
20 your view?

21 A From my view the Compact and the FSS, you know,  
22 as I've said, have to deal with dividing water. Our  
23 projects retain a lot of water in the Republican River  
24 Basin. This affects the accounting, and from my  
25 understanding, in many different ways. One is



Aaron Thompson -- direct

19

1 evaporation.

2 Q Do you know about how much water is lost off of  
3 federal projects to evaporation, annually?

4 A I don't.

5 Q Would Mr. Swanda know that?

6 A We can ask him.

7 The federal projects -- Could you repeat the  
8 question?

9 Q My question was just generally how --your  
10 understanding of how the federal projects fit into the  
11 Compact and the FSS.

12 A So one way they fit in is they retain a lot of  
13 water; they are --because they retain water, the FSS,  
14 they have an evaporation component. They deliver water  
15 to our irrigation projects which passes by gages and  
16 accounting check points. I don't think check points is  
17 the right use --word to use, but accounting stations.  
18 And when that water is released or moved in the Basin for  
19 irrigation districts, that affects the accounting and the  
20 Final Settlement Stipulation in the Compact, which I  
21 think is kind of our -- In my opinion, power projects  
22 most affect the Compact.

23 Q So in your understanding of the Compact and the  
24 FSS, is there any federal water right in the projects?

25 A There's federal storage use rights; there's, I

Aaron Thompson -- direct

20

1 think, a few federal natural flow rights. There are  
2 district-owned water rights in the Basin, as well,  
3 irrigation district.

4 Q Are those irrigation districts organized under  
5 state law?

6 A I don't know how they are legally organized.  
7 They have to follow state law.

8 Q One of the fundamental components of the FSS is  
9 the accounting procedures. Do you know what I mean when  
10 I refer to the accounting procedures, generally?

11 A Generally, I do, yes.

12 Q Have you reviewed those accounting procedures?

13 A I would say I have generally reviewed them,  
14 yes.

15 Q And with regard to Compact accounting, would  
16 you agree that the accounting is generally retrospective  
17 in nature?

18 A That is my general understanding that the  
19 accounting doesn't take place until after the irrigation,  
20 or the water season is completed.

21 Q Does that create any difficulties that you're  
22 aware of?

23 A Other than the general difficulty of accounting  
24 for something that's already happened.

25 Q From a practical standpoint, does it create any

Aaron Thompson -- direct

21

1 problems with your, shall I say customers for lack of a  
2 better word?

3 A To my knowledge it doesn't affect our  
4 deliveries; how we account for our deliveries and how we  
5 make our deliveries to our irrigation districts.

6 Q It occurs to me that you wouldn't probably  
7 wouldn't be sitting here today if you weren't asked by  
8 the State of Kansas to opine on some of these issues.  
9 You can thank Mr. Draper for that.

10 (Laughter)

11 When were you contacted about being a witness  
12 in this case?

13 A I'm going to have to go with general time  
14 periods here, but I would say a couple of months before I  
15 got the formal letter from Mr. Draper.

16 Q So was that maybe in December of 2008?

17 A I'm just --In that time period.

18 Q Give or take a month?

19 A Late 2008, early 2009, yeah.

20 Q What were you told about the nature of these  
21 proceedings?

22 A The proceedings today, or --

23 Q The nature of this dispute that we are meeting  
24 on today.

25 A I think, generally speaking, I was informed

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22

1 about the parties entering into a non-arbitration  
2 request; the fact that they were calling witnesses, and  
3 that they requested my -- requested that I be a part of a  
4 witness list that was submitted. I would say it was very  
5 general in nature, and I pretty much immediately had --  
6 was out of my legal authority and transferred him to Mr.  
7 Chaffin to discuss how that's done within the Federal  
8 Government.

9 Q Do you recall what you were asked to do in  
10 preparation for this proceeding?

11 A I was given a list of 13, 14 questions to  
12 answer and prepare the documentation for in preparation  
13 of that Touhy request.

14 Q And were you provided with materials by the  
15 State of Kansas --

16 A I was given --

17 Q -- to assist your analysis?

18 A The only materials Kansas gave me was the  
19 question, the letter with the questions and attached to  
20 that was a letter I had sent Mr. Lavene from the Attorney  
21 General's Office in the State of Nebraska.

22 Q Have you reviewed any of the technical analyses  
23 conducted by the State of Kansas in this proceeding?

24 A I've been given documents at the Compact  
25 Administration meetings. I've been given documents at

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23

1 presentations by all states, and I've reviewed those.  
2 I've been given copies of the arbitrator; the documents  
3 that were sent to the arbitrator. I haven't reviewed  
4 page for page, but have looked through; and, of course,  
5 the arbitrator's -- one of the arbitrator's first  
6 decisions.

7 Q So within that group of documents, I assume  
8 you've received and at least given a cursory review to  
9 each of the expert reports provided by all of the states?

10 A Yes, I have.

11 Q And do you understand that the State of Kansas  
12 has made you a witness solely in the portion of this  
13 arbitration that relates to future Compact compliance?

14 A I understand I have been named as a witness. I  
15 didn't -- the part you added about future Compact  
16 compliance, I didn't pay attention to or was unaware of.

17 Q Okay. Do you recall reviewing the reports  
18 prepared by the State of Kansas and the State of Nebraska  
19 concerning future Compact compliance?

20 A I recall reviewing the reports on the --  
21 that were given to the arbitrator. I can't specifically  
22 remember if they said future or not.

23 Q Sure.

24 A I do know they talked about the future.

25 Q They were only a few thousand pages. You

Aaron Thompson -- direct

24

1 haven't memorized them all I assume?

2 A I haven't, no.

3 (Laughter)

4 Q Fair enough. Do you have any general opinions  
5 that you recall formulating about those reports?

6 A I guess more specific --

7 Q Do you have any opinions about any of those  
8 reports?

9 A Well --

10 Q And if I may, I can narrow that just by  
11 referring again to the framework of future Compact  
12 compliance. There were at least a couple of reports that  
13 related to that topic. I recognize there were a lot of  
14 reports if you don't recall anything off the top of your  
15 head, then I understand.

16 A I guess I've reviewed this information, or this  
17 type of information, and many times I have heard the same  
18 -- maybe not the same, I've heard a lot of -- As we've  
19 been to the RRCA meetings, I've heard a lot of the same  
20 conversation, you might say, that was in the reports. And  
21 I would say I didn't develop any -- I have opinions on --  
22 of course as a human being on all sorts of topics, and,  
23 here, specifically the Republican River, but --

24 Q And we'll talk about those later, but just for  
25 clarity sake, for example; I infer from your response

Aaron Thompson -- direct

25

1       that you've conducted no analysis to evaluate the  
2       conclusions in those reports?

3             A       That's, yes, I have not conducted any analysis.

4             Q       And you haven't directed anyone in your office  
5       to do that?

6             A       No, I haven't.

7             Q       Thank you. I also infer from your discussion  
8       and your current position that you are not being  
9       compensated for your appearance here today; is that  
10      right?

11            A       Absolutely not.

12            Q       Am I also correct in understanding that you've  
13      had no meetings prior to this meeting with the State of  
14      Kansas concerning this testimony?

15            A       No.

16            Q       No, you have not?

17            A       No, no meetings. Just to clarify, we've had a  
18      few phone meetings to set up, how to submit this request.

19            Q       Just some logistics?

20            A       Logistics, but most of those were handled  
21      through -- after the initial request through John  
22      Chaffin.

23            Q       Very good. Let's transition and talk a little  
24      bit about some things with which I'm sure you're more  
25      familiar, the Bureau projects, generally. Can you walk

Aaron Thompson -- direct

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1 me through the primary Bureau projects in the Basin?

2 A If you don't mind, I'm going to --

3 Q Certainly.

4 A Just so I don't forget any. I'll kind of run  
5 from upstream to downstream just to make it fair in the  
6 Republican River Basin. One of our first projects is the  
7 Bonny Reservoir on the South Fork of the Republic River,  
8 just on the border of Kansas and Colorado.

9 One of our next reservoirs is Trenton Dam, or  
10 Trenton Dam Swanson Reservoir. That's actually on the  
11 Republican River. Frenchman Creek comes in the  
12 Republican River after that, and near Imperial is Enders  
13 Dam, which is operated --Both Trenton and Enders Dam are  
14 operated and maintained by the Bureau of Reclamation.  
15 Bonny Reservoir is also operated and maintained by the  
16 Bureau of Reclamation. Bonny Reservoir has a -- doesn't  
17 have any irrigation component, and has an agreement with  
18 the State of Colorado for a managing partner there.

19 The next facility, Red Willow Dam or Hugh  
20 Butler Lake on Red Willow Creek, which runs into the  
21 Republican River just downstream of McCook, Nebraska. We  
22 also have Medicine Creek Dam which runs -- or Harry  
23 Strunk which runs into the -- off of Medicine Creek into  
24 the Republican River just downstream of Cambridge,  
25 Nebraska. Then there is a Corp of Engineers facility,



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1 Harlan County Lake. We do not operate or maintain that  
2 lake, or that dam. It's -- that's operated and maintained  
3 by the Corp of Engineers. But we do have storage rights  
4 to that reservoir.

5 And then the one in Kansas off Prairie Dog  
6 Creek that I think is Norton Dam, Keith Sebelius Lake.

7 THE REPORTER: Keith what lake?

8 THE WITNESS: Sebelius. Make sure I said it  
9 right.

10 THE REPORTER: Okay. I will get the spelling  
11 from you when you are done.

12 THE WITNESS: Thank you.

13 Q (By Mr. Wilmoth) And that's top to bottom, the  
14 complete --

15 A Top to bottom. I got out my notes for a  
16 reason. The Lovewell Dam, which receives water from  
17 Republican River through a canal in Kansas, and then has  
18 an irrigation component for the Kansas Bostwick  
19 irrigation district.

20 Q And just for sake of convenience, would it be  
21 possible to obtain just a photocopy of that and make it  
22 part of the transcript?

23 A Okay.

24 MR. WILMOTH: That would be Exhibit 1, I  
25 suppose.

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1 THE REPORTER: Okay.

2 (Exhibit 1 was marked for identification. See  
3 Index.)

4 MR. WILMOTH: It will make it easier for  
5 everybody later, probably.

6 Q (By Mr. Wilmoth) And just briefly, would you  
7 just touch on the districts that are associated or served  
8 by those facilities?

9 A I'm going to leave that for Marv Swanda, if you  
10 don't mind. I apologize for any inconvenience that  
11 causes.

12 Q Not a problem. You mentioned that these  
13 facilities began construction in the mid 1940s; is that  
14 correct?

15 A Uh-huh.

16 THE REPORTER: Yes?

17 THE WITNESS: Yes.

18 Q (By Mr. Wilmoth) Do you know, generally, what  
19 their expected yield was at that time?

20 A I know the storage, expected storage in the  
21 facilities. The total active conservation storage in the  
22 seven federal reservoirs was 480,051 acre feet.

23 Q And what is the source of that data?

24 A The Definitive Plan Report.

25 Q And that's the DPN for each project?

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1           A     The DPR.

2           Q     The DPR, excuse me, for each project?

3           A     Correct.

4           Q     So when you add those up individually, you  
5 arrive at 480,051 acre feet; is that right?

6           A     To be absolutely sure, I'm going to let Marv  
7 Swanda answer this question.

8           Q     All right.

9           A     That's my understanding though, yes.

10          Q     That's fine, that's fine. No problem.

11          A     I don't mean to be an engineer.

12          Q     No problem. And do you know what the  
13 expectations were with regard to the water supply  
14 available to meet that storage in 1940?

15          A     I know that the projects were planned, the  
16 storage reservoir projects, during their design and their  
17 analysis of these projects, they were designed to fit  
18 within the hydrologic conditions of the reservoir at that  
19 time, and to meet the needs of the Compact, as well as  
20 meet the needs of the irrigation districts that were  
21 operating from these reservoirs.

22          Q     I think I understand the point you make about  
23 meeting the needs of the irrigation districts. What do  
24 you mean by meeting the needs of the Compact?

25          A     Assuring that each state was in their -- making

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1       sure that the reservoirs wouldn't bring the states out of  
2       compliance with the '43 Compact.

3               Q     And do you know what analysis was conducted to  
4       make that assurance?

5               A     I know there are many reports. I think one was  
6       cited in our Touhy request, but there's many reports that  
7       were done in the late 30s early 40s with Reclamation  
8       engineers and scientists, but I'm not familiar with those  
9       reports, the details of all those reports.

10              Q     And I understood you to say that the projects  
11       were designed to fit the, then existing hydrologic  
12       conditions, essentially; is that right?

13              A     Yes.

14              Q     And do you have any idea how much water was  
15       projected to be available in the system at that time?

16              A     I don't know the projected inflows or projected  
17       stream flows. I know the projected water delivery  
18       amounts for the irrigation districts were 18 inches.

19              Q     Is that uniform throughout each of the  
20       districts?

21              A     That appeared to be uniform throughout each of  
22       the Republican districts.

23              Q     So that would be the same in Frenchman as it  
24       is, for example, in Kansas Bostwick?

25              A     Yes.

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1           Q     In the 1940s, would you agree that groundwater  
2 pumping was not terribly prevalent yet?

3           A     Yeah, I would agree, it wasn't prevalent, but  
4 it was mentioned in some of those reports, but definitely  
5 I would agree, it's not prevalent.

6           Q     And do you recall whether the Bureau made any  
7 assessment of the impact of groundwater pumping on its  
8 facilities at that time?

9           A     I don't recall if the Bureau made -- what kind  
10 of assessment they made from the limited groundwater  
11 pumping or -- that was happening in that time frame,  
12 meaning the early 40s, the mid 40s.

13          Q     Do you believe the Bureau was aware of the fact  
14 that groundwater pumping was occurring in some fashion?

15          A     I think they were because of the fact that they  
16 made mention to it in some of their reports.

17          Q     Are you aware of any account that was made by  
18 the Bureau for the impact of that groundwater pumping in  
19 the future? In other words, was that considered at all  
20 in designing the project?

21          A     I'm not aware of what impact they accounted  
22 for, groundwater pumping in the future. My recollection  
23 is it was mentioned as limited.

24          Q     It being groundwater pumping or impacts?

25          A     It being the impacts from groundwater pumping.

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1           Q     Do you know --Strike that.

2                     Getting back to your statement that the  
3 projects were designed to deal with the, then, existing  
4 hydrology, do you recall the period of record on which  
5 that was based?

6           A     I do not.

7           Q     Sometime prior to the 1940s though, I assume?

8           A     I would assume so, yeah.

9           Q     Do you have any understanding of how the  
10 hydrologies have changed since the 1940s, or would it  
11 have been basically the same in terms of precipitation,  
12 specifically?

13          A     I could speak to the general reports and  
14 information I have seen from my hydrologist and folks I  
15 rely on is, they've given me charts and graphs, which I  
16 submitted in this documentation illustrating  
17 precipitation levels. Generally speaking, they stay  
18 about the same throughout time, wherever that's at.

19          Q     How about the water supply in the Basin?

20          A     The water supply for me is most -- is easiest  
21 to describe as ability to deliver to our customers, and  
22 that has decreased throughout time.

23          Q     When the facilities were designed, did the  
24 Bureau plan for periods of low water with their  
25 supply?

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1           A     I think that's a trademark of Reclamation. They  
2     -- The reservoirs are anticipated to hold -- and this  
3     varies throughout Reclamation, it varies throughout the  
4     Republican River, but the reservoirs were designed to  
5     hold more than one irrigation season allotment of water  
6     to allow for times, to allow for dry periods and periods  
7     of drought.

8           Q     So they're designed to carry over water from  
9     one period to the next?

10          A     Correct.

11          Q     And obviously that water is intended to be used  
12     for something such as irrigation, for example?

13          A     You're right. Irrigation isn't the only use,  
14     but it's definitely the predominant use in the Basin for  
15     the storage projects.

16          Q     And is it -- At the time the projects were  
17     designed, is it your understanding that they were  
18     intended to be maintained as full as possible?

19          A     The --I can't speak to each reservoir, but  
20     generally speaking, some reservoirs are designed to be  
21     full all year round. Some reservoirs require a draw down  
22     at the end of the season to decrease cost of maintenance,  
23     potential safety items with the dam, prolong the life of  
24     the dam, so I think it depends on which reservoir we  
25     specifically look at if it was designed to be full every

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1 year, or not. But with mother nature filling these  
2 reservoirs, I'm sure the designers didn't intend for them  
3 to be 100 percent full all of the time or zero percent  
4 full, so --

5 Q What's Reclamation's current view on that  
6 issue? Is it your desire to maintain them as full as  
7 possible?

8 A I think I will give you --try to give you a  
9 couple of examples to answer that question. For example,  
10 Lovewell Reservoir filled up last spring, or excuse me,  
11 it filled up in the -- right before fall as we were  
12 trying to get into a wintering elevation, so we had to  
13 release water from that reservoir to bring it down to  
14 what the designers feel is an appropriate wintering  
15 elevation. And that helps prevent shore erosion,  
16 sedimentation built up in our gates and other mechanical  
17 structures that we have at our dams.

18 Q Is that related to flood control in any way?

19 A Thank you. That's a -- Another component is so  
20 that there's adequate flood control. We can fill up to  
21 conservation levels. We also have conditions in which we  
22 can ask the Corp of Engineers to go into the flood pool.  
23 Reclamation is responsible for the operation of the dam  
24 when its in conservation mode.

25 When it passes the top of conservation, we have



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1 to consult with the Corp of Engineers. It's called flood  
2 releases, and they actually determine the amount of flood  
3 releases required if the dam isn't in flood pool;  
4 however, they allow us, at times during droughts and  
5 other scenarios, to actually store a small amount in that  
6 flood pool. But once it passes flood pool, we actually  
7 get control of the reservoir again, once it gets out of  
8 flood pool. So, yes, we have to make sure there's room  
9 for flood events, is the short answer.

10 Q Is the Bureau's desire to refill the reservoirs  
11 each year to support irrigation and other uses?

12 A For the benefit of our customers, the  
13 irrigation districts, and to the benefit of the tax  
14 payers to be able to collect revenue to pay back the  
15 facilities. We -- The Bureau does enjoy seeing a full  
16 reservoir.

17 Q Are there any recreation components of these  
18 reservoirs?

19 A There are.

20 Q Does the Bureau operate or authorize any  
21 recreation activities at the reservoir? A We have  
22 agreements at some of our reservoirs with managing  
23 partners. For example, we -- the Bureau of Reclamation  
24 has recently taken on the task with their managing  
25 partners in Kansas and Nebraska to update the

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1       restrooms and shower facilities, which are considered  
2       recreation components, to meet current ADA standards at  
3       all our reservoirs.

4           Q       Does the Bureau receive any loyalty or other  
5       payment from recreation uses?

6           A       I'm not sure what our exact component of  
7       reimbursement is on recreation uses.

8           Q       Are all of the reservoirs in the Basin multiple  
9       use reservoirs?

10          A       I would say, generally, yes, they are.

11          Q       Do all of them have a recreation component, to  
12       your knowledge?

13          A       To my knowledge, they all have a recreation  
14       component.

15                 MR. WILMOTH:  And just for Mr. Chaffin's  
16       comfort.  I don't mean that to be a legal question, I  
17       mean from an operational standpoint we operate that with.

18                 THE WITNESS:  If I could, in ten minutes, can  
19       we get a break, or whenever is --

20                 MR. WILMOTH:  Absolutely.  If you'd like a  
21       break now, that's fine.  Whatever works for you, that's  
22       fine.

23                 THE WITNESS:  This --Since I've already  
24       interrupted, that would work.

25                 MR. WILMOTH:  Anytime, that's fine.

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1 THE REPORTER: Off the record?

2 MR. WILMOTH: Yes.

3 (Off the record from 9:13 a.m. to 9:28 a.m.)

4 Q (By Mr. Wilmoth) Mr. Thompson, let's continue  
5 on our discussion of projects a little bit.

6 A Okay.

7 Q How are the water rights held with regard to  
8 the projects? Are those state-issued rights, and who  
9 holds them?

10 A The --It varies who holds them. Generally  
11 speaking in our Kansas project, they're held by the  
12 irrigation district. Generally speaking, for Nebraska  
13 projects, they are held by the United States, at least  
14 the storage use rights are. Specifically, I believe  
15 there's a table in this documentation if you would like  
16 to go through them.

17 Q Which documentation are you referring to?

18 A It was submitted with the Touhy request for  
19 Kansas.

20 Q Sorry, that's fine. And let's talk a little  
21 bit about the Nebraska projects. You mentioned those  
22 are held by the Bureau?

23 A Yes, generally speaking, they are.

24 Q And by whom are those rights issued?

25 A It's my understanding that those are issued by

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1 the --in whatever state you are in.

2 Q So, the Nebraska Department of Natural  
3 Resources?

4 A Correct.

5 Q And has the Bureau sold or relinquished any of  
6 its rights?

7 A To my knowledge, we have not sold rights, but  
8 we have transferred rights in the past.

9 Q And just for sake of the record to clean up  
10 something, you mentioned that the information regarding  
11 the project water rights was located in some  
12 documentation that you had previously provided?

13 A Yeah.

14 Q Can you identify that document for me?

15 MR. WILMOTH: Off the record.

16 (Off the record from 9:32 a.m. to 9:33 a.m.)

17 MR. WILMOTH: Just for the record, my  
18 understanding is, Mr. Chaffin's offered to make that  
19 material available, and when it's made available, we'll  
20 make it part of the transcript record.

21 And I thank you for that, Mr. Chaffin.

22 Q (By Mr. Wilmoth) Does the Bureau hold any  
23 natural flow rights?

24 A It's my understanding we have a few.

25 Q Would that be reflected in this table?

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1           A     That would be in the table.

2           Q     Do you recall which state those are in?

3           A     I was thinking the Republican River, so  
4 Nebraska.

5           Q     And who owns the infrastructure associated with  
6 the projects?

7           A     The title for the projects is held in the name  
8 of the United States.

9           Q     And is the cost of that infrastructure  
10 currently being repaid?

11          A     It is.

12          Q     By whom?

13          A     There's different components that are currently  
14 being repaid. As indicated in the request to Kansas, the  
15 construction cost is approximately 233 million. The  
16 component that was given to irrigation was approximately  
17 139 million, of that, to be repaid by the irrigation  
18 districts was roughly 39 million.

19          Q     And what's the status of those repayments? How  
20 much of that 39 million has been paid down today?

21          A     I'm not prepared to answer that specific  
22 number.

23          Q     Do you care to hazard a guess, would it be 50  
24 percent? More or less than 50 percent?

25          A     I think it would be more than 50 percent.

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1 Q And what happens if those costs are not repaid?

2 A We've -- I guess we've had recent examples  
3 where the districts have been unable to make payments.  
4 And recent examples that I can think of were Frenchman  
5 Valley was unable to make payment in 2003 and 2004 on  
6 their O & M. And the Bureau of Reclamation allowed them  
7 to defer payment and restructure their payment,  
8 essentially their payment plan, over the life of their  
9 contract.

10 Q Which is 50 years?

11 A Forty years.

12 Q Forty years. You mentioned that the Bureau  
13 owns certain storage rights, and that the Bureau holds  
14 title to the project infrastructure; correct?

15 A Correct.

16 Q Do any of the individual customers -- Is that a  
17 familiar -- Is that a legitimate term? What do you  
18 prefer to use?

19 A I think customers, if we are referring to the  
20 Bureau of Reclamation's irrigation districts as  
21 customers, I typically do that.

22 Q A kinder, gentler, Reclamation. Serving the  
23 customers.

24 (Laughter)

25 Do the customers own the land served by the

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1 projects, or does the Federal Government own that land?

2 A The customers own the land.

3 Q And do the customers put the irrigation water  
4 to beneficial use?

5 A Yes.

6 Q So the Bureau does not actually irrigate any  
7 ground?

8 A No. We do have easements on some of that  
9 ground, as specifically through some of their property,  
10 so that we can maintain laterals or buried pipes, which  
11 there used to be laterals.

12 Q In your efforts to serve a particular project,  
13 are each of the reservoirs operated jointly would you  
14 say, or in tandem, or is each individually operated  
15 regardless of the status of the others?

16 A I guess I would answer that question -- I would  
17 say it's a collaborative approach, so it's jointly  
18 operated. We don't operate one reservoir so that it would  
19 harm another irrigation district.

20 Q Do you balance the reservoirs as a policy?  
21 Balance their capacities, excuse me. I don't mean the  
22 capacities, I mean their volumes, excuse me.

23 A In the Republican River, it's not my  
24 understanding that we try to do any balancing, we simply  
25 deliver water intended for whichever irrigation district

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1 has requested the water.

2 Q So if irrigation water is carried over in  
3 Enders Reservoir, for example, is that water retained for  
4 use from Enders, or is it ever sent down to Harlan County  
5 for use on the --

6 A It's --Once the water is stored, it is what we  
7 call project water, and it is used only for project  
8 purposes, whether that be year one or year five.

9 Q But when you say, "project purposes", you're  
10 referring to the project directly served by Enders?

11 A Yes.

12 Q You're not referring to the project globally as  
13 the Republican River Basin?

14 A Correct.

15 Q Okay. And has project water ever been utilized  
16 for Compact compliance?

17 A Yes.

18 Q When did that occur?

19 A To my knowledge, that first occurred in 2006.

20 Q Can you explain the circumstances of that?

21 A I believe the State of Colorado -- excuse me,  
22 the State of Nebraska requested the use or lease of  
23 natural flow rights on the Frenchman Valley and Riverside  
24 Irrigation Districts, and that -- those two districts  
25 natural flow, to my understanding, is not in our name, it



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1 is in their name, and that was a deal between the State  
2 of Nebraska and those two districts. In 2006 though, we  
3 did sell, or lease storage water from the Bostwick  
4 Irrigation District in Nebraska. And also, natural flow  
5 at Guide Rock Diversion Dam from the Bostwick Irrigation  
6 District in Nebraska. That was a 2.5 million dollar  
7 contract between the Bostwick Irrigation District and  
8 Department of Natural Resources, State of Nebraska. And  
9 also included a component since the Bostwick Irrigation  
10 District wasn't going to make deliveries and collect  
11 revenue for that money to pay their O & M assessment on  
12 Harlan County Dam, which they are assessed by the Corp of  
13 Engineers through Reclamation.

14 Q And what was the Bureau's role in each of those  
15 processes? First, let's talk about the natural flow  
16 purchase.

17 A I think the Bureau, from my understanding, I  
18 wasn't here, but the Bureau of Reclamation's role was to  
19 make sure that the irrigation district, or the component  
20 of the Reclamation project were not harmed, or in any  
21 way, used inappropriately.

22 Q What do you mean by harmed?

23 A Making sure we didn't --I guess I was thinking,  
24 making sure we didn't sell water that belonged to  
25 somebody else, or water that belonged to somebody

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1 else, or was diverted past another irrigation district  
2 that might have received that water. I think we were not  
3 party or signature to the agreement, just involved from a  
4 technical point of view for the process in the State of  
5 Nebraska in those two natural flow cases. And the other  
6 case we're responsible for the accounting of that water.

7 Q So the Bureau's approval was not required for  
8 that transaction?

9 A In 2006 the Bureau did sign a document for the  
10 transfer of water from Kansas --from Nebraska Kansas  
11 Bostwick Irrigation District to Kansas Bostwick  
12 Irrigation District.

13 Q Okay, I want to make sure I don't conflict  
14 these in my own mind. I'm talking about the natural flow  
15 purchase from the districts.

16 A Correct. We were not signature to those.

17 Q But now, let's talk about the NBID purchase.

18 A Okay.

19 THE REPORTER: The what?

20 MR. WILMOTH: I'm sorry. The Nebraska Bostwick  
21 Irrigation District, N-B-I-D.

22 THE REPORTER: Thanks.

23 Q (By Mr. Wilmoth) Now, you mentioned that there  
24 was a natural flow component to that purchase, and a  
25 storage component, correct?

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1           A     Correct.

2           Q     And is the natural flow component handled the  
3 same way as the one we just talked about, in other words,  
4 was the Bureau involved directly in the natural flow  
5 component?

6           A     I don't remember.

7           Q     Okay. How about the storage component?

8           A     Yes, the Bureau was involved with that.

9           Q     In what capacity?

10          A     We had an amendment to the Kansas and Nebraska  
11 Bostwick contract to transfer the water from one district  
12 to the other district.

13          Q     And Reclamation was a signatory to that, was it  
14 not?

15          A     Yes, it was.

16          Q     What factors did you evaluate when the --  
17 Strike that. I don't want to put words in your mouth.  
18 What factors did you evaluate when you approved, for lack  
19 of a better word, that transaction, or approved of that  
20 transaction?

21          A     I think the factors -- the first factor was to  
22 make sure that we didn't harm another irrigation district  
23 within our projects, or outside our projects, but I'm  
24 only aware of project irrigation districts and  
25 Reclamation districts downstream. I think that was the

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1 first thing. We also wanted to make sure that it didn't  
2 violate any environmental actions that we had already had  
3 prepared, make sure -- and I think one of the key things  
4 in there was to make sure it mimics an irrigation season  
5 so that it doesn't fall outside our current NEPA  
6 requirements.

7 THE REPORTER: What requirements?

8 THE WITNESS: NEPA.

9 THE REPORTER: Spell it, please?

10 THE WITNESS: N-E-P-A.

11 THE REPORTER: Thank you.

12 Q (By Mr. Wilmoth) Would you explain that just a  
13 little bit to me?

14 Again, I don't mean from a legal standpoint,  
15 Mr. Chaffin, but from an operational standpoint.

16 Mr. Thompson, what is important about that?

17 A It's important that we don't violate the  
18 National Environmental Protection Agency's guidelines for  
19 our projects and we've -- when each project or each  
20 contract is entered into with an irrigation district, we  
21 perform whatever is necessary, whatever environmental  
22 assessments are necessary to make sure that the project  
23 is operating within their criteria. If we operate  
24 outside of that criteria, we risk violating those laws,  
25 and we try never to violate any state or federal law.

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1           Q     So if I understand correctly then the amendment  
2 triggered some obligation in your view under NEPA to  
3 conduct an analysis of the environmental affects?

4           A     Correct. And when the amendment indicates that  
5 the water will be used as normal irrigation season, or  
6 within a normal irrigation season. I think in some  
7 cases, it said the word, "mimics" irrigation season.  
8 That triggers a, what we call a C-E-C.

9           Q     Is that a categorical exclusion?

10          A     Correct.

11          Q     From NEPA?

12          A     From NEPA. And those are relatively easy to go  
13 through the checklist and see that, okay, you're really  
14 not falling outside your guidelines of how you were going  
15 to operate, and how you were going to draw down, or draw  
16 up the reservoir, and relatively easy procedure to go  
17 through.

18          Q     And if a request were made to deliver water  
19 outside the irrigation season, that might trigger some  
20 more of this NEPA restrictions or requirements?

21          A     Correct.

22          Q     Is there any comparable NEPA trigger in your  
23 understanding to the movement to the natural flow water?

24          A     No, not to my understanding. Maybe when --

25          Q     I'm sorry.

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1           A     One of the key things is natural flow. In these  
2     examples, was, it's not stored as -- it's not considered  
3     project water and we were unable to store natural flow,  
4     and that falls within the NEPA requirements and our  
5     project requirements.

6           Q     And if I understood you earlier, you indicated  
7     that Reclamation was not a party to those contracts, and  
8     again, I don't mean a legal -- to ask you for your legal  
9     opinion, but procedurally, if it's a natural flow  
10    situation, it is unlike the NBID KBID contract and  
11    there's not amendment. And is that why there is no NEPA  
12    requirement in your understanding?

13          A     Correct.

14          Q     Okay.

15                THE REPORTER: You said the NBID and the what  
16    contract?

17                MR. WILMOTH: Kansas Bostwick Irrigation  
18    District, KBID contract.

19                THE REPORTER: Thank you.

20          Q     (By Mr. Wilmoth) And, again, for the record,  
21    I'm just asking procedurally what you're looking at, not  
22    what your legal obligations are.

23          A     Right. Procedurally, we didn't -- for those  
24    natural flows, we didn't do any environmental assessment  
25    that I know of.

Aaron Thompson -- direct

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1           Q     Okay. You mentioned that the Corp of Engineers  
2 operates Harlan County Lake, for the most part; is that  
3 correct?

4           A     Yes. Operates and maintains Harlan County Dam.

5           Q     Does the Corp of Engineers have an interest in  
6 any of the other projects?

7           A     No other than what I said earlier when the  
8 projects enter into flood pool, they have an interest in  
9 how they're operated.

10          Q     Is that true in regard to each of the  
11 individual facilities?

12          A     Each one of them, yes.

13          Q     Okay. So the Corp has a role, essentially, in  
14 the flood pool?

15          A     Correct.

16          Q     The management flood pool?

17          A     Yep.

18          Q     Obviously one of the reasons that you are here  
19 today is because you have expressed some views on some  
20 concerns about certain activities in Nebraska that may  
21 have affected those on the projects. Have you discussed  
22 those concerns with the Corp of Engineers?

23          A     No, I usually try to copy the Colonel on  
24 documentation that is sent to any of the three compact  
25 states, but no conversations.

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1 Q To your knowledge?

2 A To my knowledge over those concerns.

3 Q So, to your knowledge, does the Corp of  
4 Engineers share the concerns that you have expressed?

5 A I don't know.

6 Q Let's talk a little bit about some of those  
7 concerns. And just kind of, generically, I will talk  
8 about a couple, and then I'll turn directly to a couple  
9 of documents. Am I correct in understanding that  
10 Reclamation is generally concerned about an increase in  
11 groundwater wells in Nebraska?

12 A Yes.

13 Q Could you describe that concern, briefly, for  
14 me?

15 A We've seen a sharp increase in a number of  
16 groundwater wells throughout the Republican River Basin,  
17 and we've seen a decrease in our water supplies to our  
18 projects.

19 Q And do you know, generally, where these wells  
20 are located relative to the stream?

21 A It varies.

22 Q Do you have a concern about all the wells  
23 regardless of their location, or are some wells of  
24 greater concern to you?

25 A I think we have a concern with all the wells.



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1 That concern comes from, if a well is obviously close to  
2 the river, it can affect the flows quicker. If it's  
3 farther from the river, it does take a long, long time,  
4 but we want to remain, I think, objective to the system  
5 as a whole, so we are concerned with any well that  
6 affects stream flow to the river.

7 Q And you've studied the affect of these wells on  
8 stream flow? Have you? That's a question, sorry, not a  
9 statement.

10 A Personally, I've been given information by my  
11 hydrologist, and others, within Reclamation, that have  
12 looked at these wells, and the number of wells in our  
13 project deliveries.

14 Q And aside from your testimony, I didn't see any  
15 -- I don't recall seeing any analysis, modeling analyses,  
16 for example, of the impact of these wells. Has that been  
17 conducted, and is that available to us?

18 A Model analysis, it was referred to in some of  
19 the testimony was given to us by the State of Nebraska.

20 Q Okay, so that's what you're predominately  
21 relying on for your conclusions about well impacts?

22 A No, I would say that's one thing we rely on.

23 Q Okay.

24 A I would say we look at -- I would say the group  
25 as a whole looks at precipitation, snow fall, groundwater

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1 levels, groundwater pumping, conservation practices.

2 Q But you're not aware of any modeling that the  
3 Bureau has done to analyze the affect of these wells on  
4 the river?

5 A No specific Bureau modeling, no.

6 Q Do you know whether or not groundwater  
7 withdrawals in Nebraska have increase or decreased since  
8 2000?

9 A I can't tell you if they've increased or  
10 decreased since 2000. The actual volume of water?

11 Q That is what I mean, yes.

12 A Yeah.

13 Q Thank you. Are you familiar with something  
14 called an Integrated Management Plan?

15 A Yes, I am.

16 Q Can you explain, for the record, what an  
17 Integrated Management Plan is?

18 A I think, generally, an Integrated Management  
19 Plan is to --was adopted under LB 962, the State of  
20 Nebraska, for basins that were designated by Department  
21 of Natural Resources as either fully- or over-  
22 appropriated. The Integrated Management Plans are jointly  
23 developed by this DNR, and then NRD, affected by the  
24 appropriate designation, either fully- or over-  
25 appropriated. They have goals of achieving equity among

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1 water users and managing the water in the appropriate  
2 NRD.

3 Q Have you read each of the current IMPS,  
4 Integrated Management Plans?

5 A I have read them.

6 Q What do you understand to be the primary tool  
7 that the NRDs intend to use, Natural Resource District,  
8 intend to use in the IMPS to manage water?

9 A The primary tool in the IMPS, specifically in  
10 the Republican River, the three NRDs that have IMPS in  
11 the Republican River, their primary tool to manage water  
12 is control of groundwater pumping. Other tools they  
13 intend to use are surface water leases or purchases;  
14 repairing and management. But to your question, the  
15 primary one would be controls or limits on groundwater  
16 pumping.

17 Q And how do you understand those to operate?

18 A It's my understanding that the Upper Republican  
19 and the Middle Republican NRD assigned a value to the  
20 1998 through 2000 to pumping levels, and took a 20  
21 percent cut from those pumping levels in their latest  
22 Integrated Management Plan. The latest meaning, I think  
23 they had an Integrated Management Plan in '04, but it was  
24 revised in '07.

25 The Lower Republican NRD has taken nearly the

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1 same approach, but just --instead of a 20 percent cut  
2 from a number, has just indicated a number to pump to.

3 Q And these limitations on groundwater  
4 depletions, do you view those as -- do you understand  
5 those to be hard caps?

6 A No, it's my understanding that you can -- my  
7 understanding in the Upper in the Middle Republican, and  
8 I'm not for sure, quite honest, in the lower, but my  
9 understanding in the Upper and the Middle is that you can  
10 use less in one year, and more in another year as long as  
11 the Natural Resource District falls within its compliance  
12 amount.

13 Q When you say, "You can use less", you mean an  
14 individual pumper?

15 A That's my understanding.

16 Q Okay. There are -- Do you recall seeing  
17 allocations for the individual NRDs in those IMPS?

18 A I recall --

19 Q In the groundwater depletion levels?

20 A Meaning, what the 20 percent number is? I  
21 honestly don't remember it now.

22 Q I'm not asking you for the specific number,  
23 just the concept. Do you recall seeing that concept?

24 A Yes.

25 Q As a maximum depletion?

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1           A     Rephrase your question. Maybe I'm not  
2 understanding your --I understand that they would pump to  
3 the 20 percent below these 1998 to 2002 levels.

4           Q     And how does that relate to the individual  
5 users?

6           A     My understanding is, that would correspond to  
7 an allocation that they could put on their crops.

8           Q     So do you know what would happen, under the  
9 IMP, for example, if an NRD exceeded it's overall  
10 groundwater limit -- withdrawl limit?

11          A     I don't know what would happen.

12          Q     And with regard to these individuals using less  
13 water in one year and more in another, is that this  
14 concept of carrying over that you are talking about?

15          A     Correct.

16          Q     So if I understand you, you're not sure how the  
17 carry over provisions relate to the overall withdrawl  
18 limitations NRD wide; is that right?

19          A     That's fair, yes.

20          Q     Have you conducted, or has the Bureau conducted  
21 any modeling work to determine the effectiveness of the  
22 IMPS in ensuring future Compact compliance?

23          A     No Bureau modeling work.

24          Q     Have you relied on the work of others to  
25 formulate an opinion about that?

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1           A     I have.

2           Q     Whose work?

3           A     I've relied on DNR's work and --

4           Q     Is that the Nebraska Department of Natural  
5 Resources?

6           A     Yes.

7           Q     Do you consider that work to be reliable?

8           A     Yes, I do.

9           Q     I have a couple of documents I'd like to  
10 transition into now. I have copies of these. I only have  
11 five copies, but I think that should be sufficient. This  
12 is -- would be Exhibit 3?

13           THE REPORTER: Three, right.

14           Could I have Exhibit 2 to mark, please?

15           MR. CHAFFIN: Yes.

16           THE REPORTER: Thank you.

17           MR. WILMOTH: Thank you.

18           (Exhibit Nos 2 and 3 were marked for  
19 identification. See Index.)

20           Q     (By Mr. Wilmoth) Mr. Thompson, do you recognize  
21 this document? Take a minute to familiarize yourself if  
22 you need to.

23           A     (Witness examining document) I do. It's  
24 interesting that it doesn't have a signature or a date on  
25 the front of it.

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1           Q     I'm principally interested in the January, 2008  
2 testimony provided to the NRD, which is an attachment to  
3 that document.

4           A     Okay.

5           Q     Did you prepare this testimony?

6           A     I did, as well with my -- in conjunction with  
7 my staff.

8           Q     Would that include Mr. Swanda?

9           A     Yep.

10          Q     Who else would that include?

11          A     That would include Marv Swanda, Gordon Aycok,  
12 Patrick Erger.

13          Q     The same group you mentioned earlier?

14          A     The same group, and probably a few others.

15          Q     Is there any data available that supports this  
16 testimony that has not already been produced for the  
17 states?

18          A     To my knowledge, it has been produced somewhere  
19 in the --

20          Q     In the Touhy request response?

21          A     In the Touhy request or the FOIA request from  
22 Nebraska?

23                 THE REPORTER: What is the second request you  
24 said?

25                 THE WITNESS: FOIA request made by Nebraska.

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1 THE REPORTER: Spell that.

2 MR. CHAFFIN: F-O-I-A.

3 THE REPORTER: Thank you.

4 Q (By Mr. Wilmoth) Can you just briefly describe  
5 what this testimony is?

6 A This is testimony to the Middle Republic and  
7 Natural Resource District's Integrated Management Plan.

8 Q And this was provided concerning the most  
9 recent IMP; is that correct?

10 A Correct.

11 Q And I wanted to ask you about some of the  
12 statements contained in there. The first statement is, I  
13 believe located on page one. You indicate, quote, the  
14 development of these wells have significantly impacted  
15 the water supply for the federal projects. What did you  
16 mean by significantly?

17 A Let me find the quote again. Do you know what  
18 paragraph it's in? Okay, significantly, you asked what I  
19 meant by significantly?

20 Q Yes.

21 A The -- I meant the -- significantly the amount  
22 of deliveries and inflows to our project water supply and  
23 for our project water supply.

24 Q So by significantly, did you mean if affected  
25 those things in a large volume, or that if affected them



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1 average, I threw out five percent as a number that's --it  
2 would be close to average, so --

3 Q Okay, close to the historical average in that  
4 plan?

5 A Close to the historical average.

6 Q Okay, and by impacted, do you mean deprived of  
7 water or something different?

8 A Impacted meaning, yeah, not having water. Not  
9 having the reliable water sources or not having the  
10 amount of water they had in the past.

11 Q And by water supply, did you mean the water  
12 flowing in the river?

13 A I guess, in my mind I could think of water  
14 supply either as water flowing in the river or water  
15 available for water delivery, but, if you have more of  
16 one, you have more of the other. If you have more water  
17 flow, you have the ability to store more water. So I  
18 guess, I specifically don't remember which one I might  
19 have been thinking of there.

20 Q Okay. And by federal projects, I assume you  
21 meant the Republican River project?

22 A Yes.

23 Q All of them?

24 A Yes.

25 Q Are there any projects that were more

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1 significantly impacted than others, in your view?

2 A If we're talking Republican River-wide, yeah,  
3 there are projects that have seen more significant  
4 decreases than other ones.

5 Q And which ones are those?

6 A Off the top of my head, more significant ones  
7 were Enders, Trenton, or excuse me, Swanson. Ones with  
8 lesser significance were Red Willow, or excuse me,  
9 Medicine Creek Dam. I did not mean to say Red Willow;  
10 and Harlan County.

11 Q Moving down to the last sentence on this first  
12 page of your testimony, you indicate, quote, this  
13 uncertainty could negatively affect the irrigation  
14 districts and Reclamation's willingness to enter into  
15 similar agreements in the future, close quote. Now I  
16 understand from your earlier discussions that you are not  
17 here to testify about Reclamation's willingness to do  
18 anything with regard to contracts in the future; is that  
19 correct?

20 A Correct.

21 Q Okay. But at this time, what did you mean by  
22 Reclamation's willingness?

23 A I believe at this time --I was just reading the  
24 sentence above that. I was trying to get some context for  
25 what was going on. The NRD had entered into

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1 contracts with some of our irrigation districts. There  
2 was some litigation that caused payment for those water  
3 deliveries to be delayed. My recollection at this point  
4 in time, payment had not been made for the water that had  
5 been purchased.

6 Q So if Reclamation wasn't going to get paid, it  
7 wasn't going to be willing to continue arrangement?

8 A Well, if our irrigation districts --Reclamation  
9 did not receive any of that payment, or irrigation  
10 districts received that payment, which I  
11 guess, in turn, may have helped them make O & M payments  
12 to Reclamation; however I don't think -- just going back  
13 to that last statement, I don't think any of that money  
14 was used for that.

15 But, yeah, when I meant negatively affect the  
16 irrigation district and Reclamation's willingness, there  
17 was a concern that if they didn't get paid for this  
18 water, there would be a, at that point in time, a  
19 difficulty with the contracts that were being  
20 contemplated at that time.

21 Q Was this one of the natural flow purchases  
22 which you were referring to, or one of the -- was this  
23 one of the --

24 A I was --

25 Q --purchases in which Reclamation was a party?

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1           A     One of which Reclamation was a party to, which  
2     would have been the sale of Harry Strunk water, project  
3     water through the Frenchman Cambridge Irrigation  
4     District.

5           Q     Let's turn to page two of your testimony, if  
6     you would, the first sentence under the word, "concerns",  
7     or the heading "concerns." You indicate, quote,  
8     Reclamation is very concerned with Nebraska's failure to  
9     meet Compact compliance, closed quote. What did you mean  
10    by that?

11          A     I meant Reclamation -- I guess just rephrasing  
12    the sentence, Reclamation was this concern that at that  
13    time, that the numbers we were seeing, that the State was  
14    out of compliance with the Compact based on the numbers  
15    that were presented to us at our RCA meetings.

16          Q     And how does that affect Reclamation directly?

17          A     I think that affects Reclamation through the  
18    IMPs, the part of the IMPs, the goals to purchase water  
19    in the dry years. Reclamation has been a willing  
20    participant in those purchases, and it concerns  
21    Reclamation that these purchases are affecting our  
22    irrigation districts.

23          Q     Because that translates into what, less revenue  
24    for Reclamation?

25          A     That means the irrigation -- Yes, the

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1       irrigation districts may not have the ability to pay back  
2       what they owe for the construction costs of the projects,  
3       or their -- or -- well, I guess in that case they are not  
4       paying for the water supply because they are not getting  
5       one.

6               Q       So the paramount issue is the customers ability  
7       to repay the debt on the infrastructure. Is that what  
8       you mean by concern in this statement?

9               A       I think that's one of the concerns that I had.

10              Q       Any others that you can recall?

11              A       Other concerns are as you -- if you sell water  
12       -- just off the top of my head. If you sell water, you  
13       may not operate a canal for a few years. There's some  
14       canals we haven't operated in five or six years. And the  
15       concern is when we turn these projects and these  
16       distribution works over to our irrigation districts, we  
17       expect them to be maintained as in-like condition that we  
18       turned them over in. And the longer that you don't  
19       operate or maintain a --or operate a canal, it does  
20       increase the maintenance on that canal.

21              Q       So there are certain canals that are held --  
22       that the title to which is held by the districts?

23              A       I'm not going to --I don't know if it's title,  
24       but within the contracts, you're definitely responsible  
25       for the maintenance of the --

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1 Q For the O & M of the infrastructure?

2 A Yes, of the, what we call distribution works.

3 Q Okay. So the -- With regard to those two  
4 issues though, the concern about Compact compliance boils  
5 down to effects on the Reclamation projects; is that a  
6 fair statement?

7 A Yes.

8 Q And Reclamation's storage rights are issued  
9 pursuant to state law; correct?

10 A Correct.

11 Q And the individual customers are subject to  
12 state law and the exercise of their water rights;  
13 correct?

14 A Yes.

15 Q In the next sentence, you indicate Reclamation  
16 is even more concerned about the continuing depletion of  
17 inflows to federal reservoirs. By "even more concerned",  
18 did you mean more concerned than your concern about  
19 impacts to projects infrastructure and customers ability  
20 to repay costs on the project?

21 A I think all those issues are related to the  
22 concern in the second sentence too.

23 Q So, if I'm understanding this testimony  
24 correctly, Reclamation is more concerned about the  
25 depletion of inflows to its projects than it is about

Aaron Thompson -- direct

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1 Nebraska's failure to meet Compact compliance? A I --From  
2 what I wrote there in that statement,  
3 yes, that's the way I wrote it.

4 Q Okay.

5 A And that's what --at that point in time,  
6 that's the --that was the level of concern.

7 Q Has that changed?

8 A No, I think that's our current concerns.

9 Q And throughout this document, then you go on to  
10 attribute the problem of non-compliance and federal  
11 reservoir impacts to Nebraska groundwater pumping; is  
12 that a fair summary?

13 A I'm sorry, could you repeat that again?

14 Q My understanding of your testimony was that you  
15 attribute the impacts of Nebraska groundwater pumping to  
16 be the primary cause of these declines in federal  
17 reservoir levels, and the potential reason for non-  
18 compliance of the Compact.

19 A Correct.

20 Q That's a fair summary of what --

21 A That's a fair summary of the --

22 Q And to what degree do you attribute groundwater  
23 pumping as the cause of these things? Is it 100 percent;  
24 is it 50 percent?

25 A I think the number is closer to 80 percent.

Aaron Thompson -- direct

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1 Q What is that number based on?

2 A That number is based on, I believe testimony  
3 given by the former director or DNR, Ann Bleed.

4 Q Do you recall when that was provided or where?

5 A Approximately March of 2007.

6 Q At a meeting?

7 A At a -- I think a meeting at the State --  
8 in the State Capitol.

9 Q Have you considered the impact of other  
10 potential contributing factors such as conservation  
11 practices?

12 A Yes.

13 Q Do you have any idea what the relative  
14 percentage those have on flows?

15 A I do not.

16 Q Is there any Reclamation study underway to  
17 evaluate that issue?

18 A There is. As part of the final settlement  
19 stipulation, it's my understanding that Reclamation is to  
20 work with both colleges in Kansas, or research institutes  
21 in Kansas and research institutes in Nebraska to evaluate  
22 the effects of conservation practices such as no-til,  
23 terracing.

24 Q What's the status of those investigations?

25 A My understanding the -- at the last compact



Aaron Thompson -- direct

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1 meeting we had that the project is near completion, and  
2 that -- is scheduled to be completed within, I believe,  
3 this year. It's the required time period for the  
4 completion of that study.

5 Q Have you heard of any preliminary findings  
6 related to that study?

7 A I have not. Marv Swanda may be able to answer  
8 that question with more detail.

9 Q Is Mr. Swanda participating in that study; do  
10 you know?

11 A To my knowledge, he is not participating.

12 Q And one of the other issues you mentioned  
13 earlier was evaporative losses off of the federal  
14 reservoirs. Are you aware of any quantification of that  
15 volume?

16 A I'm aware that our operations office does take  
17 into consideration evaporation off these reservoirs, and  
18 that is definitely a question Mr. Swanda should be able  
19 to answer in his testimony.

20 Q Okay.

21 A little later in your testimony, you  
22 indicated that, quote, federal projects were constructed  
23 based on the concept that project surface water rights  
24 would be protected. Does that sound familiar?

25 A It definitely sounds familiar.

Aaron Thompson -- direct

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1           Q     What do you mean by protected? Do you mean  
2     legally or physically?

3           A     I'd kind of like to read the context of where I  
4     wrote that first.

5           Q     Middle of the -- well, it's actually the very  
6     next sentence. It would be "Federal projects were  
7     constructed -- the middle of page two. Middle of the last  
8     paragraph on page two. What did you mean by protected?  
9     Did you mean legally or physically protected or --

10          A     I think I meant --I meant both, meaning they  
11     would be legally protected under state laws, and they  
12     would be physically protected from any unauthorized  
13     diversions.

14          Q     And who did you contemplate would protect those  
15     rights?

16          A     From my knowledge, it's always been the State  
17     of Nebraska would enforce the rights on the river.

18          Q     Okay, and from whom did you think that  
19     protection would be received? In other words, would you  
20     be protected from surface water users or groundwater  
21     users, or both?

22          A     I think both.

23          Q     Under Nebraska state law?

24          A     Correct.

25          Q     And this is when the projects were constructed?

Aaron Thompson -- direct

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1           A     Yes. We're referring to when the projects were  
2 constructed and obtained these water rights, what the  
3 expectation was.

4           Q     Okay, so the expectation was that the federal  
5 projects would be protected under state law for the  
6 groundwater pumping; is that correct?

7           A     Correct.

8           Q     Middle of page four under a section titled,  
9 "Reality", second paragraph, you've got a statement there  
10 about half way through that says, "Reducing groundwater  
11 depletions will gradually allow the stream flow to  
12 recover and result in improve chances of maintaining  
13 long-term compliance." Do you see that?

14          A     Yep.

15          Q     What did you mean by "recover"? Did you mean  
16 pre-development levels?

17          A     I don't think I was referring to any point in  
18 time in levels meaning pre-development; post-development.  
19 70s or 80s I think I was --

20          Q     Was there a hydrologic level of recovery you  
21 were talking about?

22          A     I think I was referring to the fact that if you  
23 reduce that, that you would receive more as groundwater  
24 tables increased. You would receive more water as base  
25 flow in the stream.

Aaron Thompson -- direct

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1 Q Just intuitively?

2 A Yes,

3 Q So there's no model runs that support that  
4 statement or anything?

5 A No model runs; correct.

6 Q And no hydrologic evaluations, just intuition?

7 A Well --

8 Q Educated intuition albeit, but --

9 A Okay, exactly. It's information I've received  
10 from hydrologists and my own intuition, yes.

11 Q A little further down you've got a statement  
12 that, "The hydrologists and others associated with the  
13 compact Administration have stated that significant  
14 reduction in groundwater depletions is necessary for  
15 Nebraska to come into long-term compliance with the  
16 Compact." Right here under "Compact Administration".

17 A Oh, I'm sorry, I have it.

18 Q Who are the hydrologists and the others that  
19 you are talking about?

20 A I think there was -- referring not only to  
21 hydrologists within my own organization, but -- "and  
22 others" meaning State or Natural Resource District  
23 employees that I -- gave presentations at the NRD  
24 meetings or at the hearings for the IMP testimony.

25 Q Okay. At the end of that page you say,

Aaron Thompson -- direct

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1 "Reclamation agrees that long-term Compact compliance can  
2 only be achieved through significant reductions in  
3 groundwater use in Nebraska and Colorado." Do you see  
4 that?

5 A Yep.

6 Q What is long-term in your view?  
7 Does that mean in perpetuity?

8 A I guess to answer that question, we didn't get  
9 her overnight. Our project deliveries and inflows didn't  
10 decrease one -- overnight, and it's my basic  
11 understanding through the scientists and engineers that  
12 have helped me that when you stop pumping groundwater,  
13 you can receive an increase in stream inflow, but you  
14 will because of the lag effect is what they currently  
15 refer to, you will not see that soon. If it took 30 years  
16 to create it, it's going to take --just giving you  
17 generalities, 50 years to get it back.

18 Q So with regard to long-term Compact compliance,  
19 you're talking about making sure that Nebraska's in  
20 compliance 50 years from now?

21 A Correct.

22 Q Okay. And what's a significant reduction in  
23 your view here?

24 A Earlier we --I kind of put a number on  
25 significant. My view is that the NRDs took a 20 percent

Aaron Thompson -- direct

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1 reduction from their allocations based on '98-2002. And  
2 that we were presented with information that shows that  
3 those -- at least was referenced Enders Dam, the model  
4 runs that we were given, that further reductions needed  
5 to be taken to increase inflow into the streams.

6 Q To get that inflow back to the five percent  
7 variation of the historical average; is that the idea?

8 A To get it close to the historical average,  
9 yeah.

10 Q And who provided you that modeling data?

11 A His name is Jim --he's in the back of the  
12 room.

13 MR. LAVENE: Jim Snyder.

14 THE WITNESS: Thank you.

15 Q (By Mr. Wilmoth) When was that provided? Do  
16 you recall when that was provided?

17 A In November of 2007.

18 Q And did you consider that analysis credible?

19 A Yes, I did.

20 Q So in your view, significant groundwater  
21 reduction would be in excess of a 20 percent number that  
22 you've been referring to?

23 A Yes, it would.

24 Q Have you evaluated the economic ramifications  
25 of that and what it might mean for the Basin?

Aaron Thompson -- direct

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1           A     No, I have not.

2           Q     Have you evaluated what it might mean for the  
3     viability of repaying project costs?

4           A     Federal project costs?

5           Q     Yes.

6           A     I've only evaluated the effect to date of how  
7     reduced water supplies have affected project costs, not  
8     how it would in the future.

9           Q     At the top of page five, you indicate that the  
10    -- your expectation that the Bureau's water rights will  
11    be protected in the future. Do you see that statement?

12           MR. CHAFFIN: Which statement are you referring  
13    to?

14           MR. WILMOTH: Top of page five, first sentence.

15    A     Correct, I do see that statement.

16           Q     (By Mr. Wilmoth) And how do you anticipate  
17    that that protection will be afforded?

18           A     I guess I anticipate through the IMPS and  
19    everybody's interest in not only Compact compliance, but  
20    delivering water to project lands, whether it be inside  
21    an irrigation district or outside an irrigation district,  
22    are a common goal for everybody.

23           Q     You want to ensure that that's the case; is  
24    that what your're saying?

25           A     Yes.

Aaron Thompson -- direct

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1           Q     And you don't believe currently that that is  
2     the case?

3           A     I believe currently our projects have seen  
4     dramatically reduced deliveries to their project acres.

5           Q     And do you understand that the State of  
6     Nebraska essentially is attempting to deal with the  
7     issues of concern to you through the IMP process; is that  
8     your belief?

9           A     It's my understanding the goal of the IMP is  
10    to, yes, create equity among water users.

11          Q     But a little later down in here you say --  
12    about half way through this paragraph under expectations,  
13    "Reclamation does not believe that the IMP proposed by  
14    the Middle Republican NRD and DNR will result in Nebraska  
15    netting long-term Compact compliance," correct?

16          A     Correct.

17          Q     And you indicated earlier in your deposition  
18    that you were not certain about how the various  
19    components of the Middle Republican NRD IMP would  
20    operate, vis-a-vis one another; is that correct?

21          A     Referring to --

22          Q     Allocations, individual allocations versus the  
23    overall pumping withdrawl limitations, things like that?

24          A     Correct.

25          Q     And you didn't conduct any independent



Aaron Thompson -- direct

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1 evaluation of the Middle Republican NRD, did you? The  
2 Bureau? Or did you rely just on what other --the NRDs and  
3 DNR and other entities told you?

4 A We didn't do any of our own modeling or --just  
5 based on historical records from our projects and what we  
6 saw for precipitation and project deliveries.

7 Q Okay. At the end of this paragraph, you  
8 indicate a request by Reclamation, that the NRDs and the  
9 State place, quote, further and sufficient restriction on  
10 groundwater pumping that will allow stream flows to  
11 recover comma provide equity among water users comma and  
12 assist Nebraska in achieving Compact compliance. Do you  
13 see that?

14 A Yep.

15 Q What is sufficient restriction in your view?

16 A To me, sufficient restriction is --  
17 enables the surface, the senior surface water users in  
18 the basin to be able to deliver the same amount of water  
19 or --to be able to deliver water to their projects.

20 Q Is this based on the 18-inch allocation that  
21 was originally assumed?

22 A I think we've seen through history that the  
23 projects have been able to survive and live off something  
24 less than the definitive plan report of 18 inches. To  
25 put a specific number on each district, it changes as you

Aaron Thompson -- direct

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1 go east to west. To put a specific number, I'm not  
2 prepared to, but at least be able to say they could --  
3 they should be able to deliver water to their project  
4 lands.

5 Q Does this get back to the five percent of  
6 historical average concept?

7 A Like I said, I don't know if that number is  
8 within five percent of the 18 for all districts involved,  
9 but it's definitely more than has been delivered in the  
10 past five or six years.

11 Q Now when you talked about stream flow recovery  
12 in this statement, what did you mean by that?

13 MR. CHAFFIN: Did you have a specific reference  
14 that you were looking at that we could follow?

15 MR. WILMOTH: Yeah, it's the same sentence.

16 MR. CHAFFIN: Oh, okay.

17 MR. WILMOTH: It's the last sentence of the  
18 paragraph titled, "Expectations."

19 Q (Mr. Wilmoth) With regard to stream flow  
20 recovery, are you just again referring to generally  
21 speaking flows that would support project purposes?

22 A Correct.

23 Q But you have no specific recovery level in  
24 mind?

25 A I didn't when I wrote that document, no, just

Aaron Thompson -- direct

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1 that they would increase more than what they had been in  
2 the last few years.

3 Q Gotcha. And does the Compact require that in  
4 your view?

5 A The Compact put a moratorium on --or the final  
6 settlement stipulation put a moratorium on groundwater  
7 levels.

8 Q Does the Compact refer to groundwater levels,  
9 or groundwater recovery?

10 A I can't --

11 MR. DRAPER: Are you asking him a legal  
12 question at this point Tom?

13 MR. WILMOTH: No. He says he wants to make --In  
14 his testimony, he indicates that he wants to ensure  
15 Nebraska remains in Compact compliance. And I'm trying  
16 to figure out what he means by that, what's his frame of  
17 reference. I don't mean the legal question.

18 Q (By Mr. Wilmoth) I'm just asking you, when  
19 you talk about stream flow recovery and Compact  
20 compliance, are those one in the same? Or, for example,  
21 could Nebraska completely sever the connection between  
22 groundwater and surface water and still be in Compact  
23 compliance if the right volume of water makes it to the  
24 gage?

25 A Well, I think between these two sentences

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1       you already tried to make that, in my mind where I was  
2       making  
3       that connection is that you can be in Compact compliance  
4       and surface water irrigation districts can still not have  
5       water to deliver. And that's the tie I tried to use  
6       among equity among water users.

7           Q       Okay, so then if I understand what you're  
8       saying, Compact compliance is different than equity among  
9       water users, and equity among water users means within  
10      the State of Nebraska?

11          A       Since I represent three states, and have  
12      projects in three states, I think it -- equity among  
13      water users means Compact compliance in all states, and  
14      equity among those water users within their compliant  
15      state.

16          Q       Within the state, so, for example, if the State  
17      of Nebraska for some reason decided to shut down all  
18      groundwater uses in the Basin, that would protect your  
19      project, but it wouldn't be equitable, would it?

20          A       Well, and we're getting close to first in time  
21      and priority and --

22          Q       Well, I'm just asking you what your testimony  
23      meant. With regard to equity, does that mean surface  
24      water uses and groundwater uses within the State of  
25      Nebraska need to be afforded the same treatment? Because

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1 obviously that affects Compact compliance.

2 A Yeah. I think what I was trying to indicate  
3 there was that as you reduce and you put reductions on  
4 groundwater pumping, we'll see an increase in stream  
5 flow, and with that increase in stream flow, depending on  
6 how much you get, would you be able to have just Compact  
7 compliance, or would our projects be able to operate and  
8 run and still have Compact compliance within the state.

9 Q Okay, so, just to be clear, there's a  
10 difference between Nebraska's Compact compliance and  
11 Nebraska making the federal projects whole? In this  
12 testimony, this particular issue seems to be directed to  
13 the latter, not Compact compliance; is that correct.

14 A I think it tries to hit it both; achieving  
15 Compact compliance and achieving equity among water users  
16 is what it's --

17 Q Okay. Let me transition into the effect of  
18 some of these reduced water deliveries. You indicate at  
19 one point in your testimony that, "The reduced water  
20 deliveries have significantly reduced the economic  
21 benefits provide by the projects." And I will locate  
22 that statement for you in just a moment. It's on the  
23 last page under, "Conclusion," middle of the paragraph.

24 A Which paragraph?

25 Q Middle of the first paragraph on the last page

Aaron Thompson -- direct

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1 at the top. Which benefits are you referring to in this  
2 statement?

3 A I think I'm --Let me read it real quick here.

4 Q Absolutely, take as much time as you need.

5 MR. CHAFFIN: Tom, would this be a convenient  
6 time to take a quick break?

7 MR. WILMOTH: Sure, I will just let everybody  
8 know too, some of these --I do have only one other real  
9 line of questions that relates obviously to the direct  
10 testimony in the case. A lot of these questions have  
11 already been answered because of this -- what we've just  
12 gone through, so I would anticipate we've maybe got  
13 another 20 minutes. But I'm more than happy to take a  
14 break.

15 MR. CHAFFIN: That would be great.

16 THE REPORTER: Off the record?

17 MR. WILMOTH: Yes.

18 (Off the record from 10:49 a.m. to 10:58 a.m.)

19 Q (By Mr. Wilmoth) Mr. Thompson, can you turn  
20 your attention to the top of page six of I believe it's  
21 Exhibit 3.

22 A Yes.

23 Q About half way down that paragraph you have a  
24 statement, "The reduced water deliveries have  
25 significantly reduced the economic benefits provided by

Aaron Thompson -- direct

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1 the projects. " And my last question, I believe before we  
2 took a break was, which benefits were you referring to?

3 A Right. And then I go on to say, other impacts  
4 to these were recreation, fish and wildlife. So I think  
5 the economic benefits include those, but are also crop  
6 loss, payments to the -- to Reclamation from the  
7 irrigation districts when we've seen reduced water  
8 deliveries throughout since the projects were  
9 constructed, the first term --the first contract terms  
10 were for 40 years, and they were extended, I think, to  
11 allow new ones to be put in place.

12 In July 25th of 2000, new contracts were put  
13 in place. The economic impacts of those new contracts  
14 compared to the old ones were a reduced percentage paid  
15 to Reclamation, increasing the percentage that was owed  
16 by aid to irrigation. So those kind of economic impacts,  
17 the irrigation districts ability to pay those fees  
18 require the United States government to reduce their  
19 percentages associated with OM & R payments. But also  
20 with reduced deliveries comes reduced crop yields.

21 Q Do you have any evidence of that latter?  
22 Reduced crop yields?

23 A I have no economic analysis on that.

24 Q What about agricultural analysis?

25 A I believe in our draft, Frenchman Valley

Aaron Thompson -- direct

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1 Appraisal Study there are some general analysis of crop  
2 yields.

3 THE REPORTER: What was the name of the study  
4 again?

5 THE WITNESS: Frenchman Valley Appraisal Study.

6 Q (By Mr. Wilmoth) Do you know what the crop  
7 yield was in 2005 in KBID?

8 A I do not.

9 Q If I told you it was the highest yield  
10 reported, would you be surprised?

11 A I guess not.

12 Q So there's -- Do I infer from that last answer  
13 that there is not a direct connection then between  
14 impacts and reduced yields?

15 A No, I think there is a direct impact to reduced  
16 yields, and -- or reduced water deliveries in crop  
17 yields.

18 Q Are these reductions from some kind of an  
19 optimal amount or from a historical amount?

20 A It's reductions would be from a historic  
21 amount.

22 Q So over the -- if I'm understanding what you're  
23 saying, over the course of the life of these projects,  
24 yields have gone down as water supply has declined?

25 A When the projects are unable to deliver water



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1 yields are decreased.

2 Q Well, I mean, from a theoretical standpoint, I  
3 understand that's true.

4 A Okay.

5 Q And I'll concede that in theory, but is there  
6 any practical evidence of that fact of reduced yields  
7 over time that you know of?

8 A I guess I'm going by what I recall from  
9 conversations on the Frenchman Valley Appraisal Study and  
10 intuition that when you have projects that have not seen  
11 deliveries in two or six years, they're going to have  
12 reduced crop yields.

13 Q Okay, and are there any studies other than the  
14 Frenchman Valley Appraisal Study that quantifies these  
15 lost benefits? A None that I know of, or can think of.

16 Q And in the next sentence in this statement, you  
17 indicate that other impacts are related to lost fish and  
18 wildlife benefits; is that correct? And recreational  
19 benefits?

20 A Correct.

21 Q And does the Bureau possess water rights for  
22 those uses?

23 A Our projects are generally authorized most --  
24 they're all under the Pick-Sloan projects; generally have  
25 authorizations for irrigation, recreation, fish and

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1 wildlife benefits.

2 THE REPORTER: What did you say, Pick-Sloan?

3 THE WITNESS: Pick-Sloan.

4 MR. WILMOTH: P-i-c-k hyphen S-l-o-a-n.

5 THE REPORTER: Thank you.

6 A (Continuing) And that I am unaware of how these  
7 -- of how water rights are associated with those other  
8 two components.

9 Q (By Mr. Wilmoth) But those are operational  
10 authorizations, is that what you're saying? That the  
11 projects could be operated for those purposes?

12 A Correct, and have a -- the projects have an  
13 authorization to provide those kind of benefits.

14 Q But you're not aware of any water rights that  
15 are held for those purposes?

16 A No.

17 Q So, by enlarge, I just want to make sure I'm  
18 understanding the relationship of your projects and  
19 Compact compliance. If the State of Nebraska stays  
20 within its allocation collectively, under the Compact,  
21 but customers of the Bureau receive less water than  
22 they're entitled to under the contract, that doesn't have  
23 anything to do with Compact compliance, does it? That's  
24 an issue of project impacts?

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1 A I'm going to ask you to repeat the question.

2 Q If you assume for the sake of this question,  
3 that Nebraska is in Compact compliance, but that surface  
4 water users are receiving less water from the projects  
5 than they might historically have received. There's not  
6 an issue of Compact compliance there, is there, it's an  
7 issue of whether or not the projects are being impacted?

8 A Right. The -- We can -- I'm not an expert on  
9 Compact compliance accounting, but the amount of water we  
10 receive doesn't necessarily mean the State will be in or  
11 out of compliance.

12 Q And so at least in this testimony, there's a  
13 good component of it that really is speaking to the  
14 impact of groundwater pumping on projects that  
15 Reclamation oversees that is not related to Compact  
16 compliance; isn't that correct?

17 A Well, the relation, I think, as I kind of  
18 formulated earlier was this project water is --it has  
19 affects to Compact compliance, whether it be evaporation  
20 or when it's delivered and passes by a gage, and how that  
21 in any given year affects any given state, varies. It's  
22 my understanding that generally speaking, that when you  
23 have projects delivering water in a normal water year,  
24 you have water passing by gages, and that can increase or  
25 decrease the State's allocation.

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1           Q     So the physical presence and the mechanics of  
2     how water flows through the system relates to compliance?

3           A     Correct.

4           Q     But the issue of whether or not surface water  
5     users in the Reclamation project get their full  
6     entitlement or not doesn't necessarily have to do with  
7     Compact compliance, does it?

8           A     Right. The amount of water that they get or do  
9     not get doesn't necessarily mean they're Compact  
10    compliant.

11          Q     Let's turn to your statement of concerns here,  
12    and this was provided --and I'll give everyone a copy  
13    here. This will be Exhibit 4.

14                (Exhibit No. 4 was marked for identification.  
15    See Index.)

16           MR. DRAPER: Is this marked as an Exhibit?

17           MR. WILMOTH: This would be No. 4.

18          Q     (By Mr. Wilmoth) Do you recognize this  
19    document?

20          A     Yes, I do.

21          Q     And could you describe basically what this  
22    document is?

23          A     This document is an attempt to answer questions  
24    one, eight and ten submitted by the State of Kansas for  
25    our Touhy request.

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1           Q     And just generally, what is the nature or the  
2     substance of this document? If you could just summarize  
3     it, general conclusions.

4           A     It's to the general conclusions to show the  
5     history of the projects, how much the projects cost,  
6     where the projects were at as far as past and current  
7     delivery, and highlights from our IMP testimony.

8           Q     Is there any information that you relied on in  
9     constructing this document that was different from the  
10    earlier 2008 testimony? Any studies, for example; any  
11    modeling results?

12          A     No modeling, no studies. Well, no modeling. We  
13    did so some studies on economic impacts to our --I guess  
14    I don't know if I would call them studies, we did some  
15    analyses on our economic impacts to our projects compared  
16    to the IMP testimony actually putting dollar  
17    amounts.

18          Q     And that analysis is contained in this  
19    document, or in some other materials?

20          A     It's general amounts. This is --in this  
21    document, yes.

22          Q     And the underlying analyses have been provided  
23    in response to the Touhy request to Nebraska in response  
24    to it's FOIA request? Is that right?

25          A     For the economics or the mod- -- no additional

Aaron Thompson -- direct

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1 modelings.

2 Q For the economic.

3 A For the economic? I think the only analysis  
4 for the economics was provided in this right in here, so  
5 whatever was written in this document.

6 Q And if I could turn your attention to the third  
7 page, and I'm sorry these page are not numbered, but it  
8 looks like this.

9 A Yeah.

10 Q About half way down --I'm going to try not to  
11 tread ground we have already tread since there's not any  
12 new back up data that supports this that isn't in the  
13 2008 testimony, but in the first full paragraph there,  
14 you indicate, "Groundwater development and other  
15 activities in the Basin directly impact the water supply  
16 for the canals associated with the federal projects." Do  
17 you see that?

18 A Uh-huh.

19 Q What are the other activities you are referring  
20 to there?

21 A Give me another moment. I guess I'm going to  
22 have to say, I can't -- the way the sentence is  
23 structured, I can't think of what other activities we  
24 were talking about.

25 Q Would it possibly have been conservation

Aaron Thompson -- direct

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1 practices?

2 A Oh, I think that would be a fair other activity  
3 to repairing, management, conservation practices.

4 Q And did you make any effort to distinguish the  
5 impact that's attributed to the groundwater pumping in  
6 those other activities?

7 A Like a --

8 Q Percentage breakdown.

9 A Percentage. No, I didn't in this  
10 documentation.

11 Q And you don't have any studies underlying this  
12 material that would support or identify that relative  
13 attribution?

14 A I think the only reference I can think of I  
15 made to the percentage of groundwater affects is in IMP  
16 testimony at the 80 percent number.

17 Q Okay, and with regard to groundwater  
18 development, I assume that means groundwater development  
19 in Colorado, Kansas or Nebraska; is that right?

20 A I think that's fair to say because in the  
21 above, we reference a -- Colorado Reservoir and we  
22 reference Nebraska Reservoirs.

23 Q And did you make any effort in support of this  
24 testimony to distinguish between the impacts attributable  
25 to Colorado, Kansas or Nebraska?

Aaron Thompson -- direct

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1           A     We put all of them on there, so we put -- our  
2     -- in the affected area the Colorado, Kansas and Nebraska  
3     reservoirs.

4           Q     And what are you referring to?

5           A     In the above Federal reservoirs average inflow,  
6     the above table.

7           Q     Okay, so that's just a inflow volume though,  
8     that doesn't necessarily identify the level or extended  
9     groundwater impact associated with any one state pumping,  
10    does it?

11          A     Correct.

12          Q     On the next page, top of the second full  
13    paragraph, you indicate again that their reduced water  
14    supply has impacted the districts ability to repay their  
15    shares of costs. Do you see that?

16          A     Yes.

17          Q     And you mentioned that certain accommodations  
18    have been made, or have been historically made when that  
19    occurs; is that right?

20          A     Yes.

21          Q     And I understand you can't testify or explain  
22    what might happen in the future, but do you have any  
23    reason as you sit here today to believe that  
24    accommodations could not be made in the future?

25          A     I could speak to three accommodations I can



Aaron Thompson -- direct

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1 think of we've made, H&RW District, I guess, back in the  
2 eighties, accommodations were made to reduce or  
3 restructure or dissolve payment when we had low water  
4 years recently in '03 to '05 range, we allowed the  
5 districts to equalize that payment over a course of time,  
6 and then with the new contracts, we allowed a percentage  
7 change adjustment on their allocation to OM & R payments.

8 Q These things are made to make it easier to pay  
9 off the debt; is that the idea?

10 A Make it so the districts have an ability to pay  
11 and keep operating. But that debit isn't necessarily  
12 forgiven, it's transferred to power customers and what's  
13 known as Aid to Irrigation.

14 Q Towards the end of the page, and on to the  
15 next, you indicate that the reduced revenue to the  
16 Federal Government has been about five million dollars;  
17 do you see that?

18 A Correct.

19 Q And how was that figure calculated?

20 A That figure was used in -- for the irrigation  
21 districts in the Basin that renewed their contracts on  
22 July 25th of 2000. That five million dollars was figured  
23 -- their OM & R payment was, for any of those districts  
24 was somewhere between 20 and 33 percent, and in the new  
25 contracts was reduced to somewhere between, say, two and

Aaron Thompson -- direct

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1 five percent. And that five million dollars was  
2 calculated based on that reduction in number from the  
3 time the contracts were signed to the end of the fiscal  
4 year '08.

5 Q And what's the practical affect of a reduction  
6 of that magnitude? Does that affect project operations  
7 other than the repayment restructuring?

8 A It reduces what is paid by -- or what the  
9 irrigation districts are responsible for and what the  
10 power district -- increases what the power district, or  
11 power customers are responsible to pay for.

12 Q So the United States is getting paid, it's just  
13 a matter by whom they are getting paid; is that what you  
14 are saying?

15 A Correct, that the debt was not forgiven, it was  
16 just reallocated.

17 Q So is it truly a reduction in revenue then, or  
18 is it just a shift in the allocation of costs?

19 A It's an adjustment in cost allocation.

20 Q And this -- Let's see, you've got a statement  
21 later on this last page about a third of the way down,  
22 "We do not believe that the groundwater pumping  
23 allocations provided in the current Integrated Management  
24 Plans are sufficient to prevent groundwater mining in the  
25 Basin." Do you see that statement?

Aaron Thompson -- direct

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1 A Yep.

2 Q What is your definition of groundwater mining?

3 A My definition of groundwater mining is lowering  
4 of the groundwater table.

5 Q At all? Lowering the groundwater table at all?

6 A I guess I don't know what you mean. When I  
7 think of the definition of groundwater mining, it's  
8 pumping or causing the aquifer level to decrease lower.

9 Q Okay, in some measurable amount?

10 A Right.

11 Q And what do you base your conclusion on? The  
12 conclusion that the IMPS won't prevent that?

13 A The -- One of the things that I base that on is  
14 model runs that we've seen in the Basin that show that  
15 stream flows are going to --are continuing to decline in  
16 the future.

17 Q These are model runs that the Bureau produced  
18 or that Nebraska produced?

19 A Yeah, Nebraska DNR produced.

20 Q Okay, thank you. These are the runs from 2007,  
21 December of 2007, I think?

22 A November of 2007.

23 Q November of 2007. Thank you. And you're not  
24 aware of any provision in the Compact that precludes  
25 groundwater mining, are you? In other words, Nebraska

Aaron Thompson -- direct

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1 could allow groundwater to go down to 1,000 feet below  
2 land surface, couldn't they?

3 A I'm not aware of any number in the contract  
4 that would, yeah, -- that would show a level of  
5 groundwater.

6 Q Later on you indicate it's your position that  
7 groundwater consumptive use must be reduced to allow the  
8 base flows to recover to a level that will allow both  
9 Colorado and Nebraska to consistently comply with the  
10 Compact. Does this get back to your earlier testimony  
11 that you believe recovery is required to bring you back  
12 to the five percent of historical inflows to the  
13 facilities?

14 A I believe recovery is necessary to -- from this  
15 statement to allow base flows to increase and I think  
16 there is a some sort of sustainable level of the  
17 groundwater level that would allow for Nebraska and  
18 Colorado to comply with the Compact.

19 Q And by base flows, you are talking about  
20 groundwater bed base flows, or does your concept of base  
21 flow have a surface water component?

22 A I guess what I was -- just what I was thinking  
23 in my mind, as the groundwater table rises, our rivers  
24 and streams see increased base flow, and that aides in  
25 Compact compliance, it aides in irrigation ability for

Aaron Thompson -- direct

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1 surface water irrigators to store and use water.

2 Q So your basic position as I understand it, is  
3 that groundwater levels need to recover to some level  
4 that maintains a consistent base flow in the river? In  
5 other words, could Compact compliance be effectuated  
6 without such a recovery, or is that a pre-condition in  
7 your view to compliance?

8 A I believe that's -- I believe if groundwater  
9 levels were allowed to reach a sustainable level, that  
10 would allow base flows to recover and help meet Compact  
11 compliance.

12 Q Do you have any idea what percentage of the  
13 Republican River flow is made up of base flow  
14 attributable to groundwater?

15 A I don't know that number.

16 Q How much of a reduction in groundwater pumping  
17 is required? I know I talked about this earlier, and I  
18 believe I heard you explain that the requirements in the  
19 IMP are insufficient. Have you determined what level  
20 would be sufficient? Is it another two inches off  
21 existing allocations in the NRDs, or is it three inches  
22 or four inches?

23 A I've been at presentations where they showed  
24 different allocation amounts such as three inches, seven  
25 inches, five inches.

Aaron Thompson -- direct

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Q I see.

A And to be honest, I don't remember at what point in time -- usually the presentations were geared in very specific areas, and I don't recall.

Q But these were presentations essentially conducted by DNR --

A DNR.

Q -- or the NRDs to talk about options for Compact compliance, is that correct? A Correct, more specifically, I remember more from DNR.

Q Okay.

A And those weren't necessarily at the IMP deliberations and discussions, it could have been at our Frenchman Valley Appraisal Study meetings.

Q A little later down in the document, you indicate that, "Reclamation's ability to make stored water available to assist Nebraska with Compact compliance will be very limited." Do you see that?

A Last sentence, correct.

Q How does Reclamation assist with Compact compliance?

A I think one of the main ways we've assisted with Compact compliance is the lease or purchase of project water for the State of Nebraska to aide in

Aaron Thompson -- direct

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1 Compact compliance.

2 Q And so you' re statement that Reclamation's  
3 ability to make stored water available will be limited.  
4 Does that mean physically limited, or procedurally or  
5 legally limited?

6 A I think what I meant there is physically  
7 limited. If you have reduced stream flows, if you have  
8 reduced reservoir levels, your ability to sell or lease  
9 that water in any given year is definitely limited.

10 Q Just intuitively, there's less water in the  
11 system, you've got less flexibility; is that what you're  
12 saying?

13 A Correct. If a lake's empty and --

14 Q But you've performed no independent analysis of  
15 the likely availability of water in the future? A No,  
16 I've just looked at the trends of where we are headed  
17 with our reservoirs.

18 Q And when you made those evaluations, did you  
19 factor in the -- effective the IMPs?

20 A The date that we've been given for the IMPS,  
21 yes, I believe we thought about that.

22 Q So you took the historical trends, and then you  
23 projected into the future with the IMPs in place; is that  
24 what you're suggesting?

25 A Based on the model runs we were given, we did

Aaron Thompson -- direct

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1 look at where the future stream flow was headed.

2 Q Okay, so we get back to the other work done by  
3 DNR?

4 A Correct.

5 Q Which is a credible assessment in your view?

6 A Yes, it was.

7 MR. WILMOTH: I think that's all we've got.

8 I've got maybe two more questions, but let me just take  
9 one second.

10 Off the record.

11 (Off the record from 11:31 a.m. to 11:32 a.m.)

12 MR. WILMOTH: Okay, let's just go back on the  
13 record. I just have one quick question to clean up.

14 Q (By Mr. Wilmoth) I apologize if you gave me  
15 the answer to this that I might have missed it. I have a  
16 note to remind myself. As I get older and older, I pay  
17 more attention to these notes.

18 We talked a little bit about surface water use,  
19 and groundwater use, and the question that I have for you  
20 is, are some of the Bureau customers groundwater users  
21 also? In other words does groundwater apply to lands  
22 within Bureau projects?

23 A We typically refer to this -- The answer is  
24 yes. We typically refer to that as commingled acres is  
25 kind of the jargon that's used. And we have seen as



Aaron Thompson -- direct

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1 water supplies have decreased, and increase of  
2 groundwater users within our districts.

3 Q And if there's an increase in groundwater use,  
4 does that mean that revenue decreases to the federal  
5 projects? In other words, do you collect revenue off  
6 groundwater use?

7 A Not to my knowledge. Only off surface water  
8 deliveries to the project.

9 Q Do you have any idea of what the relative  
10 percentages are with the commingled acres? How many  
11 acres within each project are commingled acres?

12 A I honestly -- I don't know.

13 Q Is that information available somewhere in the  
14 Bureau? Could we obtain that information from this  
15 office or elsewhere?

16 A You know, I know that we have staff members in  
17 our regional office working on the mapping of this.

18 Q Is that like a GIS project?

19 A Like a GIS project, and I don't know the status  
20 of where that project is at.

21 Q Is that just internal to Reclamation, or were  
22 you doing that jointly?

23 A We've received data, to my understanding from  
24 the NRDs when we went out and asked for it, and they've  
25 been very helpful on giving us whatever data they have

Aaron Thompson -- cross

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1 for --

2 Q Commingling.

3 A --It's pretty easy in some, and it's a little  
4 more difficult in others. I think like the upper had,  
5 let's say four, you know, and the middle and the lower  
6 had numerous more, so --

7 Q Okay.

8 A --I don't have that percentage number for you,  
9 but I do know that we are working on it, and wish I could  
10 give you an estimate on where it's at, but I just don't  
11 know.

12 MR. WILMOTH: And with that, I'm through, and  
13 perhaps Colorado or Kansas have anything to ask.

14 MR. AMPE: I just have a couple of questions.

15 Let me go first, and then you can follow up.

16 MR. DRAPER: Okay.

17 CROSS EXAMINATION

18 BY MR. AMPE:

19 Q Mr. Thompson, just looking at your Exhibit 4 --  
20 I shouldn't say your Exhibit, Mr. Wilmoth's Exhibit 4.  
21 The final page, I believe page 5, and based on what you  
22 wrote here, is it your view that the Compact requires a  
23 sustainable aquifer, or a sustainable use of an aquifer?  
24 A I don't know if the Compact requires that or  
25 not.

Aaron Thompson -- cross

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1 Q And in the -- near the bottom of that first  
2 full paragraph on that fifth page, stated that you  
3 believe that sustain Compact requires addressing  
4 groundwater mining in the Basin. Could you just tell me  
5 what addressing groundwater mining in this context means?

6 A If m sorry, tell me what --

7 Q It's near the bottom of the first full  
8 paragraph on the fifth or last page.

9 A What I mean by groundwater mining in that  
10 sentence --

11 Q By addressing groundwater mining.

12 A By addressing groundwater mining is the affects  
13 that groundwater mining has on flows in the system.

14 Q Do you have any idea as to the amount of water  
15 that can be withdrawn from the Ogallala Aquifer without  
16 causing groundwater mining?

17 A I don't know in the Basin, where the boundary  
18 line is for water that is hydrologically connected to the  
19 river and where it's not. And where it's not connected,  
20 I won't even guess at how that could or could not affect  
21 groundwater mining.

22 Q So, perhaps a simple answer would be no?

23 A Yes, no would be a simple answer.

24 Q And from your understanding of state water law,  
25 you know, just say it was a general proposition for all

Aaron Thompson -- cross

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1 three states, does having a water right guarantee that  
2 you will receive water under all circumstances?

3 A Having a water right doesn't guarantee that the  
4 water is going to be there.

5 Q Does not guarantee physical availability of  
6 water?

7 A Correct.

8 MR. AMPE: Okay, thank you. Nothing further.

9 MR. DRAPER: Why don't we take about a Draper,  
10 three minutes.

11 THE WITNESS: What's that mean?

12 MR. WILMOTH: I don't care. If you want to  
13 take ten-fifteen minutes, whatever.

14 MR. DRAPER: I think something on the order of  
15 five is what we're looking at just to get organized.

16 THE REPORTER: Off the record?

17 MR. DRAPER: Yes.

18 (Off the record from 11:39 a.m. to 11:46 a.m.)

19 MR. DRAPER: So, we can go back on the record.

20 THE REPORTER: Okay.

21 BY MR DRAPER:

22 Q Good morning, Mr. Thompson.

23 A Good morning.

24 Q It's still barely morning. I'd just like to  
25 ask you about a few exhibits that we would mark to the

Aaron Thompson -- cross

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1 deposition from among the documents that you produced.  
2 It's Exhibit No. 5. I'd like to -- pass that to the court  
3 reporter and I will pass you another one. I would ask  
4 that you --

5 (Exhibit No. 5 was marked for identification.  
6 See Index.)

7 MR. WILMOTH: Just for the record, John, these  
8 are documents that were produced by the Bureau in  
9 response to the Touhy request?

10 MR. DRAPER: Right.

11 MR. WILMOTH: So we have copies of these,  
12 right?

13 MR. DRAPER: You do have copies of those.

14 MR. WILMOTH: Okay, thanks.

15 MR. DRAPER: We're marking this as deposition  
16 Exhibit No. 5.

17 Q (By Mr. Draper) Mr. Thompson, do you recognize  
18 this document?

19 A Yes, I do.

20 Q Now would you generally describe it for the  
21 record to identify it?

22 A This is Reclamation's written testimony on the  
23 Lower Republican NRDs IMP in January of 2008.

24 Q And does this contain information and positions  
25 of the Bureau of Reclamation similar to the January 8,

Aaron Thompson -- cross

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1 2008 testimony that you've discussed earlier in the  
2 deposition?

3 A They are very similar in content to the Exhibit  
4 No. 4, the Middle Republican IMP testimony.

5 Q So they're similar, not exactly the same. There  
6 are some differences, if I read these correctly?

7 A There are some differences, yes.

8 Q But this is a document that you -- that was  
9 prepared under your supervision?

10 A Yes, it was.

11 Q All right. I'm going to be identifying several  
12 documents like that. Some of these we've looked at  
13 documents that are relatively similar, so I'm not going  
14 to take the time to go through them.

15 (Marked Exhibit No. 6 for identification. See  
16 Index.)

17 As deposition Exhibit 6, I've identified a  
18 document dated November 1, 2007; so you recognize this  
19 document?

20 A Yes, I do.

21 Q Would you describe it, generally, for the  
22 record?

23 A This was the testimony provided to the Upper  
24 Republican NRDs, draft IMP in November of '07.

25 Q So this is a document, in many ways, is

Aaron Thompson -- cross

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1 parallel to the previous two sets of testimony that we've  
2 discussed with respect to the -- would be the Lower and  
3 Middle Republican Natural Resource Districts?

4 A Yes, they are close in content, but not exactly  
5 the same.

6 Q Again, I notice there are some differences.  
7 All right. I'd like to also identify as Exhibit No. 7,  
8 and excerpt from one of the documents that you provided  
9 in your response to our Touhy request.

10 (Exhibit No. 7 was marked for identification.  
11 See Index.)

12 And this would be deposition Exhibit 7. This  
13 does not have a cover letter or cover page. Do you  
14 recognize this document as being an excerpt as one of the  
15 documents that you provided?

16 A Yes, it looks like an excerpt from the draft,  
17 Frenchman Valley Appraisal Study Report.

18 Q This is what you referred to earlier as the  
19 draft Frenchman Valley Appraisal Report?

20 A Correct.

21 Q And I would just note that I have --the  
22 excerpts I've made since it is a long document, the first  
23 two pages as we found it in what you've provided under  
24 the heading, "Summary", and then the final Chapter 7  
25 which has the title "Conclusions and Concerns." If you'd

Aaron Thompson -- cross

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1 take a minute to look at this since we haven't looked at  
2 this document, or else a similar one earlier. Would you  
3 take a look at it and describe what the major points are  
4 --Well, let me back up. Could you say a few more words  
5 about what this actually represents. Is this a draft  
6 document at this time?

7 A This is still a draft document at this time.

8 Q And what is the purpose of the study that is  
9 behind this document?

10 A The general purpose of the study is to  
11 determine in the --for the Frenchman unit with the  
12 current conditions that the reservoir is in that area, to  
13 examine and look at alternatives in the Basin in that  
14 particular area of the Basin; and to determine if further  
15 detailed feasibility study is warranted by the United  
16 States Government to further look at the detail. So the  
17 appraisal study would be the first level of detail to  
18 look at, options for the irrigation districts, and uses  
19 of the water in the Basin, in that particular Frenchman  
20 unit part of the Basin.

21 Q And this is the unit that includes Enders  
22 Reservoir?

23 A It does, yes.

24 Q Mr. Wilmoth was asking you about your positions  
25 as expressed in some of the documents that have already



Aaron Thompson -- cross

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1       been made deposition exhibits. If you look over to the  
2       third page of this document, it's labeled page 51. The  
3       last paragraph there starts without -- with the words,  
4       without drastic reductions. Do you see that sentence?

5           A       I do.

6           Q       Would you explain the basis for that statement?  
7       You might read it for us just so that people that don't  
8       have the document in front of them can understand.

9           A       It says, the paragraph starts with, "Without  
10       drastic reductions in groundwater pumping in the  
11       Frenchman Basin, there will not be enough stream flows to  
12       provide any sizeable deliveries to the H&RW Irrigation  
13       District.

14          Q       What does H&RW stand for?

15          A       I'm blank on that.

16          Q       Is that the --

17          A       Hitchcock and Red Willow. Is that the --

18          Q       And I see you've defined that on the first page  
19       of the document.

20          A       Okay.

21          Q       Yeah, it's Hitchcock and Red Willow Irrigation  
22       District. Just the statement we just asked you to read,  
23       does that represent the assessment of the Bureau at this  
24       time?

25          A       That district has not made deliveries in

Aaron Thompson -- cross

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1 several years, and continues to not have enough water in  
2 the reservoir to make a substantial delivery. I think  
3 beyond the -- I think this year they might be able to  
4 make a three inch delivery allocation. Maybe. But the  
5 study is to determine if -- is to look at alternatives  
6 if, for example, if the district was to make deliveries  
7 every third or fourth or fifth year, how would that look,  
8 and what quantities would that -- would those deliveries  
9 look like, and is that a viable option for the district.

10 This is one district that still has a -- if  
11 not have a re-payment contract, but a water service  
12 contract, which means that they just pay for water that  
13 is delivered.

14 Q And I've just excerpted, for convenience, the  
15 beginning and ending of the text of the draft report, but  
16 there is further text that supports the summary and the  
17 conclusions that I've excerpted in the draft report; is  
18 that right?

19 A Yes.

20 Q I'd like to identify as deposition Exhibit No.  
21 8 a letter that I think you are familiar with, but went  
22 to Mr. Lavene from you dated January 10th, 2008.

23 (Exhibit No. 8 was marked for identification.  
24 See Index.)

25 Do you recognize that?

Aaron Thompson -- cross

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1 A I do.

2 Q Is this the letter that you wrote to Mr.  
3 Lavene?

4 A Yes, it is.

5 Q And generally what does it discuss?

6 A It goes over general conditions or possible  
7 terms for surface water purchases or leases.

8 (Exhibit No. 9 was marked for identification.  
9 See Index.)

10 Q I'd like to provide you also as what I've  
11 identified as deposition Exhibit 9. A later letter that  
12 you provided to Mr. Lavene; is that right?

13 A Correct.

14 Q And what is the subject of this letter?

15 A This letter is to expand on the first letter,  
16 additional parameters that might need to be looked at;  
17 different conditions that might need to be looked at, and  
18 also contained a very general process for the contracting  
19 process for leasing or purchasing water.

20 Q And are you involved with discussions with the  
21 State of Nebraska at this time regarding purchases or  
22 leases of water?

23 A Not at this time, no.

24 Q Have you had previous discussions with them?

25 A I think our previous discussions are

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1 highlighted in the information requests that we gave back  
2 to the State.

3 Q Have you had discussions since your last letter  
4 of May 7th, 2008?

5 A We did have a water purchase in 2008, but not  
6 -- it was for one year only, not for a long term lease or  
7 purchase of that water.

8 Q And is that accomplished before the date of  
9 this letter or --

10 A That was actually the Frenchman Cambridge  
11 Irrigation District with the State of Nebraska before the  
12 date of this letter.

13 Q So since the date of this letter, you have not  
14 had further discussions?

15 A Correct.

16 Q I'd like to provide you now, and asked to be  
17 marked as deposition Exhibit 10.

18 (Exhibit No. 10 was marked for identification.  
19 See Index.)

20 You were discussing with Mr. Wilmoth, the  
21 concept of commingled acres, and first I want, in this  
22 regard -- does this letter come from your files.

23 A It has our stamp on it so yeah, I believe it  
24 does come from, or, yes, it does come from our files.

25 Q And you are generally the custodian or in

Aaron Thompson -- cross

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1 charge of those files?

2 A This office has the responsibility of keeping  
3 our project files.

4 Q This is a letter dated May 1, 2006 to Mr.  
5 Simpson, Mr. Pope and Mr. Raunshagen. Those identified  
6 as acting area managers. This was before you assumed the  
7 position as area manager; is that right?

8 A Yes, it is.

9 Q I wanted to draw your attention to the bottom  
10 of the first page of this letter, which is discussing the  
11 plans that Nebraska plans to take in anticipation of the  
12 water short year in 2006. And there, Ann Bleed, the  
13 acting director of the Department of Natural Resources,  
14 indicates that some irrigators, and I am quoting, "Some  
15 irrigators in the Superior Canal surface water delivery  
16 area will be using an alternate supply from groundwater  
17 wells located below Guide Rock Diversion Dam. Is the  
18 Superior Canal surface water delivery area an area that  
19 would fall under the category that you described as being  
20 commingled acres?

21 A I think it's fair to say, generally, somewhere  
22 within our irrigation district there's a commingled acre  
23 somewhere, so, yeah, I would think it's fair to say that  
24 there's a --there's commingled acres within the district.

25 Q This is one example that there are commingled

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1 acres throughout the various project areas throughout  
2 Nebraska.

3 A Yes.

4 Q To go back to an earlier question that you were  
5 asked by Mr. Wilmoth, you indicated that you had reviewed  
6 some or all of the expert reports submitted in this  
7 arbitration. You didn't receive those reports from  
8 Kansas; isn't that right?

9 A I received them from my regional office and I  
10 don't know where they received them from.

11 Q Okay, as I understand it, Mr. Lavene provided a  
12 set of the exhibits in this proceeding; is that true? If  
13 you know.

14 A I really don't know.

15 MR. DRAPER: Or maybe counsel can confirm that.

16 THE WITNESS: Can counsel confirm that?

17 MR. LAVENE: I can confirm that.

18 THE WITNESS: Thank you, sorry.

19 MR DRAPER: I have no further questions.

20 We're done.

21 THE REPORTER: I need you to advise him of the  
22 read and sign, please.

23 MR. WILMOTH: You're entitled to read and sign  
24 and make minor corrections associated to that to show the  
25 authenticity and the correctness of what was stated.

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1 Given the timing, I'm hoping you will waive that  
2 entitlement.

3 MR. DRAPER: Well, if they want to reserve that  
4 that's fine. It doesn't mean that we can't go forward  
5 with it. If it's reserved, it's fine with me.

6 THE WITNESS: I would like to read and sign.

7 THE REPORTER: Thank you.

8 (Whereupon the deposition was concluded at  
9 12:08 p.m. on April 7, 2009)

10 - - -

11 (Deposition was resumed for recalling of the  
12 witness at 3:21 p.m. on April 7, 2009)

13 THE REPORTER: I would just like to remind you  
14 that you are still under oath.

15 THE WITNESS: I understand.

16 REDIRECT EXAMINATION

17 BY MR WILMOTH:

18 Q Mr. Thompson, I don't know if you have been  
19 sitting in the back and thinking about this or not, but  
20 if you haven't, would you take a few minutes and look at  
21 those eight points that are listed on the back page of  
22 Exhibit 16. And I'm principally interested in points 3,  
23 4 and 5, I suppose.

24 A Okay.

25 (Witness examining document)

Aaron Thompson -- cross

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1                   Okay, I've reviewed them.

2                   Q     Okay. And this document may predate your  
3 arrival here, but are you generally familiar with the  
4 concepts embodied in this document and these positions  
5 that are identified herein?

6                   A     I am. And this does predate me, but I am  
7 familiar with the concepts.

8                   Q     I apologize for not asking you these questions  
9 originally. I was focused on the date and that's why I  
10 didn't bring them up earlier. And this may retread some  
11 ground frankly, and if it does, then we'll curtail it and  
12 call it a day, but --

13                   And before I proceed, let me restate again,  
14 what I am principally interested in is the time period  
15 between the date that this document was prepared; roughly  
16 June of 2006 and let's say the time that you prepared  
17 your testimony in this proceeding.

18                   A     Okay.

19                   Q     During that time period, did anything change in  
20 your mind with regard to these positions or roles of  
21 Reclamation?

22                   A     No, I see no -- I can think of no significant  
23 changes to the points. I would like to clarify though  
24 that I am unaware of LB 1 226 in point number eight.

25                   Q     Okay, that's fine. So with regard to point



Aaron Thompson -- cross

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1       number 3, if I understand this correctly, at that time,  
2       and until the time that you prepared your testimony, the  
3       position or role of Reclamation was to assist the states  
4       with Compact compliance when that can be done in a manner  
5       that doesn't injure the facilities?

6           A       Yes.

7           Q       Is that a fair statement?

8           A       Yes, it is.

9           Q       So once again, the paramount concern of  
10       Reclamation is protection of its facilities?

11           MR. DRAPER: By facilities, do you mean its  
12       structures separate from operations and the ability to  
13       serve its customers?

14           MR. WILMOTH: No. I mean projects, the ability  
15       to serve customers, the ability to derive revenue for re-  
16       payment, the infrastructure.

17           A       Sure, we're, you know, one of our primary  
18       things is safety of dams is what we call it, but yes,  
19       it's all of those things that you just listed and  
20       probably a few more.

21           Q       Okay. And is that generally what you meant in  
22       number five, protect project viability?

23           A       Sure, I think my interpretation of what was in  
24       -- is what's meant there. When we usually talk about  
25       project viability, we talk about our structures being

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1       able to hold a conservation pool if we have gates that  
2       are in need of repair or have to be -- if the pool has to  
3       be lowered to repair those gates, we want to protect the  
4       viability of our projects so we want to do preventative  
5       maintenance to help protect those gates and ensure there  
6       is a conservation irrigation water supply for that  
7       reservoir.

8               Q       And so, number four is protect our surface  
9       water supply for each of our projects. Take whatever  
10      appropriate action is needed to protect project water  
11      rights. Do you see that?

12             A       Yes.

13             Q       Would those actions include participating in  
14      this proceeding?

15             A       I think that's a -- I think protecting our  
16      water rights includes participating in Compact  
17      discussions, which would include this Touhy request.

18             Q       And appearing as a witness in this proceeding?

19             A       Yes.

20             MR. WILMOTH: That's all I got.

21             MR. DRAPER: I don't think I have any  
22      questions.

23             MR. WILMOTH: Well, thank you again, Mr.  
24      Thompson.

25             (Concluded at 3:28 p.m. on April 7, 2009)

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CERTIFICATE OF WITNESS

DEPOSITION OF AARON THOMPSON

Taken April 7, 2009

I certify that I have read my deposition  
referenced above and that discrepancies, if any, are  
listed by page and line numbers as follows:

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION AND/OR REMARKS</u>
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_____	_____	_____
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Signature of Witness

Subscribed and sworn to before me this \_\_\_\_  
day of April, 2009.

\_\_\_\_\_  
Notary Public